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STATE OF WASHINGTON  
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No. 40426-5-II  
COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

John J Hadaller, Appellant

v.

Mayfield Cove Homeowners Association, Respondents

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AMENDED APPELLANT'S OPENING BRIEF

Filed By ;

John J. Hadaller,  
Appellant Pro Se  
135 Virginia Lee Lane  
Mossyrock, Wa. 98564

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## I. ASSIGNMENT OF ERRORS

1. The trial court erred when it made a decision under assumption the “association’s” statement was correct, when it pled Hadaller only owned 2 lots thus 2 votes instead of the amount provided to him by the CCR’s which was at least 3, which would turn over the results of the vote on the issues.

2. The trial court erred when it made findings that Hadaller created Mayfield Cove Estates Water System # 2 ownership in the Associations name. The trial court also erred when it found that Hadaller also transferred ownership of the system by dedication or when he sold the lots the system provided water to.

3. The Trial court erred by allowing the “Association” to raise, the issue of the validity of the amended Covenants by surprise at trial then, entering findings and conclusions of law when the parties and the court had pled and understood they were to be tried in the co-pending quiet title case. That created an element of surprise that prevented Hadaller’s expert witness and authority from being heard. The court furthered that error when it refused Hadaller’s motion for reconsideration, new trial or amendment of judgment. The Trial Court furthered the error when it put its death blow to the contract, the parties relied upon for nearly three years of large investments, when it found it could not be raised in the Quiet title suit per *res-judicata*, on December 3, 2010.

4. The trial Court erred when it awarded attorney fees under authority of RCW 64.38.050 to an “Association” that was

establishing itself, which was more of a hostile takeover of a development by competing developers which is contradictory to the legislatures intent of the provisions for RCW 64.38

## **II. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS**

1. Should the Trial Court have viewed the existing CCR's definitions of a "Lot" and concluded that Hadaller owned three lots instead of two, as the "association" pled, by using a method they had not yet voted in.? Did they get it backward? (Assignment of error No. 1)
2. Should have the trial Court prevented Hadaller from testifying at trial?, (and refused reconsideration) The Trial Court refused to allow him to testify the facts of how he created water system No. 2 in his own name and did the trial Court totally disregard the documents that established the ownership at creation of the water system No. 2 in John J. Hadaller's name ? Then did the court continue the error as the court found Hadaller transferred ownership of Mayfield Cove Estates Water System # 2 without a conveyance, dedication, annexation or any other form of transfer to the "Association" or the lots purchaser. (Lowe) (Assignment of error No. 2)
- 3 . Should the trial court have allowed Hadaller an opportunity to

hear the issues of the validity of the Amended Covenants on the merits, before finding them invalid? Was that due to the bad faith tactics of the Association, who did not state them as an issue in their trial brief when, before trial, the parties agreed and the Court ordered the issue of the amended covenants were at issue in a co-pending quiet title case, then exchanged a letter stipulating only the water systems were at issue for this trial? Thus Hadaller's expert witness, he obtained to prove Fuchs' signature, was avoided. Was that surprise or abuse of discretion? Were Hadaller's 3 personal objections sufficient to preserve this appeal? Thus providing the Amended Covenant document a fair trial on the merits?

4. Should the trial court award attorney fees under the RCW 64.38.050 as if the new "Association" previously existed and had standing to act over the original Homeowners Association, or was this more of a case of an opposing developer taking over the water system, roads and other benefits of a smaller developer by force, than a homeowner dispute per 64.38? Do the facts show the new "Association" is new developers using the provisions of RCW 64.38 as a "costume" to take over the development? Do the facts support this as an "appropriate case" to find fees are awardable under RCW 64.38.050 within the Legislatures intent of RCW 64.38.050? Or is this an abuse of that law?

### III. STATEMENT OF THE CASE

#### BACK GROUND<sup>1</sup>,

Between 2002 and 2010, John J. Hadaller (Hadaller) was the developer of Mayfield Cove Estates. He constructed the development in three phases. He personally built the roads, installed the utilities, obtained the permits and erected four homes and obtained a change in designation of the shoreline to allow docks on that portion of Mayfield Lake. The three different Plats are governed by the same Conditions, Covenants and Restrictions filed and refiled with each Plat ( EX. 3) Hadaller was the declarant / grantor and grantee on each declaration . Lot 1 of segregation survey became Short Plat 02-00010 ( 010), was recorded September 27, 2003, Lot 3 of segregation survey became Short Plat 05-00017 ( 017) was recorded May 17, 2007 ( CP8 ¶¶ 3.1-3.5)

Hadaller initially made himself secretary. He did not

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<sup>1</sup> most of the supporting documents for the background which supports issues of the validity of the amended covenants was duly filed in the co-pending quiet title case. However, the Trial Court, by error, allowed the issue of the Amended covenant to be heard by surprise at trial in this case, after expressly ordering it to be brought in the quiet title, thus relevant supporting documents of the Amended Covenants are scant in this case, they are filed in the other case. Additionally, on December 3, 2010 the Trial Court awarded summary judgment for *res-judicata*, for the amend covenant issue , in the co- pending quiet title case where this document is briefed.

incorporate nor did he intend to create an elaborate scheme for a specific government. He felt a road and water maintenance agreement would suffice leaving the remainder to be decided by the new owners after the plats were totally complete. It is far from complete. (CP97-99) (CP 136-138)

The tracts of land Hadaller purchased to subdivide were two approximately 6 acre Segregation Survey Lots. There exists a third Segregation Survey Lot sandwiched in between the two developed lots, separating them by 353', **that has fueled a heated battle of , Who has the right to develop Lot 2 of survey and other contiguous property.**(CP523-526) (CP 1-21) (CP 22-36)The three lots are bordered on the, 1100+ -'wide, south side by Mayfield Lake. (See Id# 37)

Hadaller retained a first right of refusal on Lot 2 of survey at the time he purchased the two segregation survey lots he did purchase. The previous owner who sold Hadaller Lots 1 and 3 of survey, William and Katherine Fortman (Fortman) reserved their 30' easement to that Lot 2 of survey across Lot 1 of survey on the southerly, (along the lake), side. (See Id# 37 and CP60,61)

In 2003 Hadaller built a county spec. 24 foot wide road and brought utilities from 600' up the county road, across Segregation Lot 1 to serve plat 010. That is known as Virginia Lee Lane. The road and utilities were extended across Lot 2 of survey to access lot 3 of survey subdivision, in late 2006 & 2007 relying on the validity of the first right of refusal and the Amended Covenant. (CP 38-40) (¶ 3.2-

3.4 CP 8) That Covenant was agreed upon by all and very critical to all parties plans. It was created because:

By August of 2005 Hadaller had sold two of the four lots in his first Plat, 010, to Clifford and Sheilah Schlosser (Schlosser) in October of 2003 and Maury and Cheryl Greer (Greer) in July 2004.(CP 46) Hadaller had a home for sale and one home erected and leased which was part of a larger piece that he was saving for sale after subdividing two lots from it in the future<sup>2</sup>.

That August of 2005, Randy Fuchs (Fuchs), a known developer approached Hadaller to buy the home Hadaller had for sale. (CP 60)

Before entering into an agreement with Fuchs, Hadaller, met with Schlosser and Greer and discussed their possible concerns and discussed an amendment to the CCR's with their plan to preserve their intents they had in place.( CP 252 ¶¶3,4,5,6.7.8) The problem mainly was Schlosser's and Greer's lots are burdened by the southern 30' easement immediately between their home sites and the break of the hill to the lake. That was and still is the only legal access to Lot 2 of survey. Hadaller and Fortman each owned an easement there<sup>3</sup>. (Id.# 37) (CP 60)

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<sup>2</sup> That became SP 08-00010 it was under construction during this suit and recorded complete May 17, 2010.

<sup>3</sup> Hadaller attempted to trade it from Fortman before he sold the first lot with the problem. Fortman refused to move it and greatly increased the price of Lot 2 of survey, when he realized Hadaller was succeeding at his developing plan.

Fortman and Hadaller, at that time, had an understanding that Lot 2 of survey's easement was restricted to only a single family easement by statute and Hadaller would pay Fortman the price for the lot 2 of survey, Fortman could receive with that easement, handicap. At the time Fortman was refusing to sell it to Hadaller for each increased offer he made.<sup>4</sup>

Hadaller had sold the Schlosser's and Greer's their lots for 30% ( CP 7 L. 2) ( appraisal in QT suit) below the appraised value because of the easement. Hadaller made it clear to each buyer before sale that only Hadaller would be able to move the southerly 30' easement to Virginia Lee Lane. And it would be done when Hadaller bought lot 2 of survey. That agreement was verbally understood and was the law of the land. In 2005, they placed that oral agreement into writing when Fuchs came shopping.( Ex. 3 Pg 11-13)(CP38-40) Hadaller had an attorney draft it with that provision and others. All parties willingly signed it and it was recorded as an Amended Covenant August 28, 2006.( CP 249¶¶2,3,5,7,8,) (CP252 ¶¶ 3,4,5,6,7,8) (CP106 ¶¶2.3,2.4)( CP98 L.10-24) Hadaller continued his investment for almost 3 years, investing over \$224,000.00 of borrowed money and labor under the assumed protection of that Covenant.( DK'd in QT suit)

Hadaller sold Fuchs the home subject to that Covenant.(CP 91-94)

**1. This is where the first of five civil suits concerning this property began.**

August of 2006 Fuchs offered to buy Lot 2 of survey from Fortman for

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<sup>4</sup> He eventually sold it to Lowe( with Hadaller's improvements) for 377% more than the original price agreed by them. The "Fortman Suit" was a deed reformation now unjust enrichment suit.

three times the original price Hadaller paid for Lots 1 and 3 of survey. After realizing the easement problems Fuchs quit the sale. ( CP 99 L.1-4) The issues of the validity of the amended covenants and private issues with Fuchs were ordered to be raised in a separate, the Quiet Title, suit, co- pending No. 09-2-934-0.(RP 4/3/09 Pg16 L.4 - Pg18 L.16) (RP Pg.27 L.8 - Pg.28 L. 10) Because of that it was not briefed in this suit, but became a surprise issue at trial.

9/12/06 Hadaller sued Fortman, for deed correction, 12/18/06 Fortman sued Schlosser and Greer to reform a mistake the title company made on their title reports and deeds.1/18/07 Schlosser & Greer Counter sued Hadaller to move the easement to Virginia Lee Lane ( CP 98 L. 20 – 22) (Briefed in the “Fortman suit”)

Hadaller was platting Lot 3 of survey at that time. Shortly after Plat 017 was recorded, an attorney, out of the blue, came from Seattle stating he was from the country and desired to have a place in the country for his children and bought all three lots Hadaller had for sale, on or about 10/17/07. Enter David and Sherry Lowe. (Lowe) He befriended Hadaller and obtained much information about the Plat and the suits from Hadaller between 10/4/07- 7/3/08 under that guise of friendship.( CP 25,L.10- CP 26 L.2) (again DK'd in QT suit)

3/24/08, Hadaller offered Fortman the 300% increased amount Fortman wanted for Lot 2 of survey, Fortman immediately refused it. ( QT suit)

On or about 5/1/08, Lowe called Hadaller and offered to partner up with him to buy Lot 2 of survey. After a long negation they concluded a plan to divide it

and rearrange the easements favorable to all, thus Hadaller did not enjoin the sale when the sale closed on 5/ 15/08 Lowe returned from his European vacation, and repeatedly avoided Hadaller's attempt to place their agreement in writing. On 7/3/08, Lowe attended his first Homeowner's Association meeting. (QT suit)

Immediately after the meeting Schlosser, Greer and Lowe met at the end of Hadaller/ Lowes driveway, separately from Hadaller, having a discussion that did not appear to be a get to know you. It had a definite business appearance. (QT) Hadaller became very concerned and approached Lowe that afternoon and asked him if he was going to walk the land and come to a plan that can be written and signed that weekend. Lowe stated he was "doing his research first and wasn't going to sign anything until he saw how that comes out." (DK'd in QT suit)

Hadaller later discovered that Lowe and Fortman had entered into a bad faith purchase agreement concerning the Homeowners Association. (CP 58 ¶ 7)

On 12/ 14/08, Hadaller received a notice to attend a "homeowner's" meeting. The notice declared the Association was incorporating and David Lowe was becoming president, Randy Fuchs was Secretary, Cliff Schlosser, Maurice Greer were Directors and Cheryl Greer became the Treasurer. They had secretly drafted and signed articles of incorporation in August of 2008. (DK'd in QT suit)

**A Facts Relevant To: The Vote To Incorporate And Adopt By-laws [ error #1]**

On 12/30/08, Randy Fuchs, Clifford Schlosser, David Lowe, Deborah Reynolds and John Hadaller met for a special meeting set to ratify the new

government. The new government was kept secret from Hadaller, **the developer/declarant with 33 1/3 % ownership**, at that time. The business on the table was to place the officers, adopt new By-laws ,(that were extraneous to the existing CCR's) and grant Lowe and Lot 2 of survey a free easement across the road Hadaller built known as Virginia Lee Lane. Hadaller opposed every action except incorporate, in a different manner and purchasing liability insurance for the Association.(CP 2,3 ¶¶5, 6) (CP 42-44,) (CP 523-526)( CP 1505-1507)

Allegedly David Lowe became President, Randy Fuchs became Secretary, and Cheryl Greer became Treasurer. The board of directors included Maury Greer and Clifford Schlosser. A vote was called for adopting the By-laws, grant Lowes Lot 2 of survey an easement across Virginia Lee Lane in exchange for removing Lot 2 of survey's legal easement across the Schlosser's and Greer's lots. Then the Association hired David Lowe as the "Association Attorney."

**Hadaller voted no** to all of the above, only voting in favor of purchasing liability insurance. Hadaller informed the "Association" he was in favor of incorporating and electing said officers, but not until he had some input into the new by-laws.

(CP3 L1-18) (CP12 ¶3.18) (CP42-44) (CP 523-526) (CP 1505-1507) Hadaller, as existing secretary stated the vote did not pass by the required majority. That majority tally correctly was: Hadaller had at least three lots and the Amended Covenant required his vote as the developer/declarant to amend the CCR's. ( CP 30 Art. I Sect. 5, & CP 28 Tax parcel Nos.)( CP 39 ¶6) The new Association

demanded the books and records be turned over immediately to them. Hadaller stated they would have to prove their validity in court first.

On 1/14/09, Hadaller received a summons to this suit to appear at a Show Cause hearing. The hearing was held 1/26/10. For the January 26, 2009 hearing to show cause why Hadaller should not turn over the books and records, Hadaller pled to the Court that the actions taken by the “Association” were beyond their authority that was provided by the CCR’s or law. Specifically because of the number of votes (lots) Hadaller held, Hadaller pled the existing declaration was sufficient to see that the roads and water system were maintained and that was all that was intended by, the declarant, to be for any government in the plat.( CP 2 -4 ¶¶5 - 7 ) (CP15 ¶¶6.1-6.11) & (CP 22-86)

For the show cause hearing Randy Fuchs submitted a declaration claiming Hadaller had forged his signature on the Amended Covenant and accordingly it was not valid. ( CP 610-614)( CP 102 L. 8- CP 104 L.2) CP 105 ¶2.2, ¶2.3) (CP 95) The court did not rule on that, but that effectively removed Hadaller’s protection he relied upon when he invested so greatly. The Court there-after considered that amended covenant was invalid, because of Fuchs signature (RP 4/3/09 Pg.5 L.13-24) and left any issue of it to be tried in a quiet title case. Which is why it is scantily briefed in this case.(RP 4/3/09 Pg. 27 L8- Pg 28 L.10.)

The “Association” argued that the existing CCR’s allowed for the new by-laws, failed to define a proper vote suspension procedure. Hadaller argued: the

by-laws could not be adopted without amendment of the CCR's, they were unconstitutional so to speak, The existing CCR's were sufficient as intended by the declarant, the CCR vote procedure was clear and valid and the Lowes had no right to vote due to delinquent assessment payments. (CP15 ¶6.1- ¶6.5) (CP 107 ¶2.5 -¶2.9) (RP 2/23/09 Pg5 L.19 –Pg6 L.2) (CP 177 L. 17-CP 178 L. 17)

Regardless of the standing of the amended covenant, or vote results Per RCW 64.38.045, the Court issued an order to deliver the books and records to the Association summarily finding they were then in control of the development. ( **Assigned error #1**) (RP 1/26/09 Pg.47 L. 15 Pg.48 L.4).

The “Association” was pressing hard to force Hadaller to provide that original copy of the Amended Covenant, with Fuchs’ signature and the other documents. ( RP 3/13/09 Pg 8 L. 14-pg 9 L. 10 & Pg. 11 L. 10-16) ( RP 2/23/09 Pg. 12 L. 17-20 & Pg 14 L. 5-8) ( RP 2/27/09 Pg 12 L 14-18 &Pg 14 L. 3-6) ( Rp 3/13/09 Pg. 4 L. 20-Pg 5 L. 1) Hadaller sent that original off to a forensic document examiner to confirm the validity of Fuchs signature was in fact the same as Hadaller and his assistant watched Fuchs sign on November 6, 2005. ( CP145-157)( CP 136-139)( CP 140-144)(CP 91-94)(CP 95-96) (CP 1505-1507)(C.P. 234-248)(CP 249 ¶4-¶5)( CP 252 ¶5, ¶6) (CP 178 L.18-25) The Document examiner confirmed Fuchs signature in a declaration which was submitted, but ignored by the Court. The declaration was filed on March 31, 2009 from forensic document examiner, Travis King, stating beyond a reasonable doubt

that Fuchs signed the Amended Covenant. (CP 93)

Hadaller hired an attorney, Allan Miller, who filed a Motion for Re-consideration (CP 182) ( CP 1505- 1507) and refused to pass the, documents etc. to the 2 water systems.(RP 3/13/09 Pg 7 L. 4- Pg8 L.13)(CP188-216)(CP185,186)

By March 23, 2009, Hadaller had all the documents delivered to the “Association,” less the water system documents. The Amended Covenants were sent to the document examiner and were lagging behind the March 11, 2009 and February 25, 2009 deliveries. (CP 187-190)( CP 1508-1509)

On 4/3/09, the Court then raised the question of the Amended Covenant may not be valid by reason the signatures were not acknowledged by a notary. When the Court asked Miller whether it did, he replied he needed time to research the answer,( RP 4/3/09 Pg 5 Line 13-25 & Pg.15 L. 22-25) Lowe stated, without authority, it did need to be acknowledged. Lowe also acknowledged **law provides the developer has the right to control his CCR’s until the plat reaches 75% ownership** by homeowners. (RP 4/3/09 Pg. 15 L. 14-18) The Court again summarily found the new “Association was in control of the plat and were entitled to the books and records. ( RP 4/3/09 pg.16 L. 6-Pg 18 L. 16)

On that 4/3/09, the Motion for Re-consideration was denied, as well as a Motion to join Fuchs, Schlosser, Greer and Lowe as parties to quiet the title of the

easements they all traded. The court found there should only be an issue of books and records and the water system only in this case, all other issues were to be in a quiet title suit. (See RP 4/3/09 Pg27 L8-14)

On a 5/15/09 hearing, the Court ordered a trial to determine only who owns and who manages the water systems. (RP 5/15/09 Pg 31 L.9 -16 )

On 6/19/09, The Court awarded attorney fees to the "Assoc." in the amount of \$7,797.50. Those fees were awarded under authority of RCW 64.38.050, (RP 6/19/09 Pg 145L. 21-Pg 17 L 14 ) Lowe confirmed the fact the court ordered trial for water the system. (RP 6/19/09 Pg3 L.20)

On 6/26/09, Hadaller filed the Quiet Title suit against the individual members quieting title to the easements they traded and a declaratory judgment on the validity of the amended covenants.

Hadaller dismissed, Alan Miller on 8/24/09, because he, had ignored answers to many court issues and the Defendants were moving for dismissal.

Hadaller hired another attorney, Alan Rasmussen with his third mortgage on his property, on 10/7/09. Lowe immediately began creating havoc with his injunction while Hadaller was installing new power lines along side of the existing water line on his own property, requiring Rasmussen's significant time to stomp out fires distracting him from his purpose and wasting Hadaller's dwindling financial ability to keep an attorney. On 9/11/09 Hadaller paid the "Association" \$14, 225.89 in fees and cost.(CP 1234-1236)

The next relevant event is the trial of 12/10/09, over the water systems.

**B. Facts Relevant To: Water System Ownership** (Assignment of error #2)

The issues with the water systems include (1) who owns each one? There are two separate systems. System #1 was created in 2002-2003 on Lot 1 of survey and serves the subdivided lots there from, that being S.P. 010 and S.P. 08-010. System #1 was within a month from having the last two lots connected to it and was moot, at time of trial. Hadaller pled from the beginning he would convey System #1, without a trial.( CP189 ¶9-¶13)

System #2 is on Lot 3 of survey (Tax parcels 28767001014, 028767001-13) and serves the lots subdivided there from.( CP 198 ) The wells and pump houses are on land Hadaller owns. The system #2 is in Hadaller's front yard for his home and he is the only person drinking water from it.( CP 213) The Lowes's two lots and one home are connected to it, but they have spent two days and one night on their property last year, during the annual Homeowner's Association meeting. Hadaller does not feel safe, he worries about the quality of his water. The Court denied Hadaller a key to his own pump house. Randy Fuchs, Hadaller's arch enemy, has the key and controls Hadaller's water.

Hadaller's intent was and still is to use the systems for their designed maximum six hook-ups each. Then turn it over to the Association to own. .( CP 189 ¶9-13)

Hadaller created system #2 in his own personal name. Hadaller submitted overwhelming evidence showing he did set system #2 up in his name. Two minor

documents were inadvertently completed by agents stating the association as owner but were corrected. He did not intend to convey it, nor dedicate, annex it, or pass it by equitable estoppels to the Association or any member(s). Hadaller had not deposited a dime of System # 2's assessment into any account. The assessments had not been paid, the one partial payment check received for payment of water from System #2 was returned for full payment, un-cashed, to Lowe with the transfer of Association documents.(CP 45,46) All assessment payments for System #2 were deposited into the Clerks registry by David Lowe.

Additionally Hadaller is able to divide two more waterfront lots from his 3.32 acre property after May 12, 2012. The pipes are in the ground for those. Hadaller does not wish to risk sacrificing those lots, because of water system ownership. For that reason he desires very much to keep ownership of system # 2 until then.

CP 280-311 is a declaration from Lewis County Senior Enviromental Health Specialist, Sue Kennedy, who administered the creation of the systems for the county and the State Department of Health. CP 280 line 19-21 confirms who the owner is in the County and States records. CP 296-311 is a succinct order of the forms Sue Kennedy is responsible to file to create and hold the owner responsible for water. Each of those state John J. Hadaller is the owner of system #2 from the beginning. It was completely created in Hadaller's name. A document known as "*Notice to Future Property Owners*", (EX.41) was provided to the lot purchasers personally, in their title report and deeds. As well as the on (

EX. 2) the face of the Plat under ( “Notes 3)” in the middle of the Plat, next to the lots Lowe bought and is page 16,17 of the CCR’s (EX 3) (CP 427) (CP 213).

There has been no conveyance, ( CP 203-211 Lowes title of lots 1,2,3 of system #2)(CP410-427) nor dedication shown to occur, (EX 2) (Appdx. Pg B) and CP 428 is full size readable text of dedication of easements to the plat not water system. When Hadaller finally was afforded the opportunity to testify by the Court<sup>5</sup>, on the actual documents that prove his ownership, the Court cut Hadaller off short and prevented Hadaller from answering the one question that mattered most, to the water system, in the trial. (RP12/11/09 PG 20 L. 19) On page 20 line 19 of December 11, 2009 trial, The Court asked Hadaller, *“If it was your intent to continue to own the water systems, both one and two, why then didn’t you.....just simply say Hadaller ... was going to own it”*

Hadaller was glad someone finally asked that question. Hadaller began explaining the whole truth, the Court shortly exclaimed. *“You be quiet, let me ask the next question!”* Hadaller was prevented, by the Court, from bringing forth the testimony and documents that prove he did not relinquish his ownership of System

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<sup>5</sup>Hadaller is aware that “the sins of one’s attorney are visited on the client” thus he does not ask for relief accordingly. However Hadaller’s attorney Alan Rasmussen failed to enter any evidence that Hadaller did not insist at least twice to be entered at trial and that was through argument. He did not ask, bring any examination to assist Hadaller (see December 10, 2010 transcript pg 73 line 22-pg 75) nor did he make even one objection, even though the Court admonished the amount of hearsay the Association was presenting in testimony. His final argument was nothing. Hadaller was in speechless disbelief that an event like this could occur. His “Good Coffee,” he obtained at Lowe’s office must have been better than Hadaller’s payment. He did not send Hadaller a final bill after Hadaller dismissed him immediately after trial. Hadaller assumes he was paid elsewhere.

# 2. The court failed to obtain the truth, the whole truth, by its own action of preventing Hadaller from answering the question that would provide for that.

The document in question at that moment, entitled “*Notice to Future Property Owners*” was filed separately in the County Auditor’s office file No. 3265055 on October 27, 2006, during creation of the water system. ( EX 41). Also, while on the stand, Hadaller had forgotten the same document was also attached to the CCRs and filed with the Plat 017 On April 13, 2007, as page 16 (Auditor’s file No. 3277585 and 3277586), which was the lots, the System #2 served(EX3). That document is identified on the title in two places, of each lot excepting that from transfer of the title. (CP203-211) (CP 410-427)

However; Hadaller feels the answer the Court was asking, at trial, the Court already knew, or should have known, because the CCR’s were in his hand, when he claimed the CCR’s do not show Hadaller noticed the future property owners that he did not intend to transfer the ownership of the system.(EX 3 Pg.16-17)

Immediately after the findings and judgment were entered, Hadaller filed a Motion for Re-consideration.(CP 360-436)( 437-464)(465-487) Hadaller assumed the Courts copy of the CCR’s ,Lowe submitted, did not have the *Notice to Future Property Owners* attached at page 16 and 17, but it did and the Court still erroneously found Hadaller did not notice the future property owners he planned on retaining ownership of the water system. (RP 2/5/10 Pg 36 -40)

**C. Facts Re: The Trial Of The Amended Covenants** (assignment of error #3),

All pleadings regarding the Amended Covenant document up to 1/26/09 were pled as if it was a valid instrument. (CP 8 ¶3.3, ¶3.4) Due to Fuchs' 1/22/09 statement( CP 610-614) that Hadaller forged his signature, the pleadings quickly changed to confirming Fuchs' signature is his own.(CP95,96) (CP102¶1-103¶8) (CP140-144)(CP145-157)(CP132-135)(CP 234-248)(CP 249-251)(Cp252-255)

This document was at issue on 4/3/09, at that hearing the Court found an issue of fact existed that precluded a summary finding one way or another on the amended covenant. Thus it needed to be heard in a trial, the Court expressly stated not in this case. It had to be raised in a quiet title case with other issues regarding titles. ( RP 4/3/09 pg.16 L. 4 - Pg 18 L. 16) (RP Pg.27 L. 8 - Pg. 28 L. 10) From that moment this issue was brought for declaratory judgment in the quiet title suit and was not mentioned again until by surprise in the middle of trial on 12/10/09.

The defense was totally taken by surprise and was completely unprepared. Hadaller personally objected 3 times to this being raised, but the court ignored it. (RP 12/10/09<sup>6</sup> Pg. 36 L. 21-25) The trial Court heard the Plaintiff's side only and entered findings based on Fuchs' oral statement he did not sign the documents.<sup>7</sup>

Hadaller's document examiner was avoided by the surprise attack and his attorney

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<sup>6</sup> There are two books for each hearing date without a designation of difference

<sup>7</sup> Rasmussen's defense had changed dramatically from the time he visited Lowes office for their pretrial meeting, "good coffee".

failed to address the issue nor did he say one word about the whole issue

The amended Covenant document is a contract between the developer/  
declarant, the two original owners and a new coming known excavator  
/developer, Fuchs, claiming he just needed a place to temporarily live next door to  
his baby sitter, because he sold his home, while he built his house nearby, he  
signed an agreement to agree to the amendment and swore he would not interfere  
with Hadaller's development. The validity of that document represents the  
retirement plan and homeownership of a 58 year old self employed man.

The Court just heard a summary judgment, in the co-pending quiet title case,  
on December 3, 2010. The "association" pled and received summary judgment in  
their favor of *res-judicata* on the issue of the amended covenant being raised as a  
personal contract between the individuals who made the contract.

The following are facts that can be substantiated from surrounding facts that  
were not made part of the record in this case because the Court ordered this issue  
to be raised in the co-pending quiet title suit. This court should not ignore this  
very important contract that all parties developed under from September of 2005-  
July of 2008. Hadaller invested over \$224,000.00 that he still has not recouped,  
relying on this contract. That will bankrupt him.

Declarant /Hadaller recorded, under Auditor's file No. 3260406, a contract  
agreement by the first owners and himself on August 28, 2006, entitled *Amended*

*Covenants.*( CP38-40) (EX 3 Pg 11-13) That agreement benefited every existing party by recording their intended expectation of their properties at that time. The Greer's and Schlosser's desires were the same, they wanted to remove the burdening easement from their southerly side and preserve their quiet enjoyment by preventing a potential excavating equipment yard across from their vacation/retirement lots.(RP 12/10/09 Pg. 9 L. 3-9) (EX 3 Pg.12¶5, Pg. 13¶10) That need manifested from the fact an excavator/ developer had offered to buy the home across the street from them. If the potential developer( Fuchs) should, later, buy Lot 2 of survey their quiet enjoyment may be lost on the southern easement. Hadaller made it clear the easement would not be moved by anyone but him. Hadaller wanted to secure his investment into building the plat roads, utilities and cost of obtaining the permits, for the plat and the dock rights. He was about to extend Virginia Lee Lane and was considering the expense of adding phase two of the plat. Fortman would not sell Lot 2 of survey to him for a price reasonably close to their original agreed upon amount. It was obvious some written memorandum was needed for all party's security of their intents of their property and to go forth with their desires, of all parties, of building, (obtaining in Fuchs' case) a home.

An attorney was retained by Hadaller with authority of and express agreement of the Schlosser's and Greer's and written agreement by Addendum dated 9/7/05, as a condition to buy into the development Hadaller was

constructing. Fuchs had sold his previous home, because of a divorce and had to find a place to live with his two sons immediately. The home he was offering to buy was next door to his baby sitter and one mile from the house he was building. As a condition of the low price he bought the home. Under further agreement for immediate occupancy, he signed an agreement that Hadaller was going to amend the CCR's that would prevent anyone, but Hadaller from adding property to the easements in the plat. ( CP 91-94) On 9/15/05, he moved in, immediately, benefit and specific performance was received by him, Fuchs accepted and enjoyed the benefit for 3 years and 3 months before changing his position on it in January of 2009. The Amended Covenant was fully executed over the year and recorded on August 28, 2006.

In September of 2006, Fuchs attempted to buy Lot 2 of survey, interfering with Hadaller's business relationship with Fortman. In October of 2007 The Lowes bought their three lots with notice of the covenant.

On 12/30/08, each party, contrary to the terms of the contract, granted Lowe an easement across their portion of Virginia Lee lane to Lot 2 of survey, in exchange of quit claiming Lot 2's easement from their lake front portion of their lot. After 12/30/08, each party had received their benefit from that contract, except Hadaller. In fact, Hadaller would be completely stripped of his benefit of the covenant that moment the easement to lot two is moved to Virginia Lee Lane. Hadaller had relied on each other party's promise, under that contract while he

extended Virginia Lee Lane and Phase 2 of the development. It cost Hadaller over \$224,000.00 to construct S.P. 05-00017. He has not been compensated for that investment. Hadaller was relying on developing and selling lots, with docks, from Lot 2 of survey by adding them to his just completed road across Lot 2 of survey. Had the covenant not been made he would not have built the road and constructed SP 05-00017. The Lowe's and other's are attempting to replace Hadaller to use Hadaller's investment in the plat for their own gain. ( QT suit)

Obviously that contract is very important to Hadaller. It is his entire life's worth on three sheets of 8 ½ x 11 paper. The issue with the December 30, 2008 easement trade was stated in a counter claim against the Association, in the answer to their Show Cause Complaint and filed on January 21, 2009. (CP 1-21) On April 3, 2009, the Court denied joinder of the individuals as third party's in this suit for RCW 64.38. They were dismissed and the covenant and easement issues became central to the Quiet Title suit in case No. 09-2-934-0, filed on 6/26/09. (RP 4/3/09 Pg27 L. 8-Pg28L.4) (CP 953-954)

On November 17, 2009, just prior to the trial in this case, Hadaller's attorney, Rasmussen, attended a pre-trial meeting in Lowe's office in Seattle. ( he said he drank some "good" coffee), They **stipulated the issues at trial to be the ownership and management of the water system exclusively.** Later that day, they passed back and forth a letter confirming just that. (CP 432- 436)

On December 1, 2009, the Association filed their trial brief, (CP1326-1348) **the statement of the issues lists no issue of the Amended Covenant for that trial.** As it was expected, because that document's standing was specifically stated to be at issue in the co-pending Quiet Title case<sup>8</sup>. On December 1, 2009, the Association filed their stipulated Exhibit list showing all their and only their documents in their favor and their trial brief, ( CP 1357-1359) there was no evidence indicating they were going to argue the Amended Covenant's standing. Hadaller's attorney, Alan Rasmussen, entered a trial brief, but no evidence list. When Hadaller realized that, he asked Rasmussen about his Exhibit list. Rasmussen stated to "*Just bring what you feel is necessary*" to the trial. Because of his sudden change of view, Hadaller considered dismissing him but dared not at that stage. Hadaller brought a thick file of previously filed evidence regarding water system #2 to trial. Rasmussen begrudgingly admitted 3 documents.

At the trial, by total surprise, the "Association" raised the issue of the whether the Amended Covenants were properly adopted and brought testimony and argument to support their claim they were not valid. Hadaller was on the stand when he was asked the first question regarding the amended covenant, his reply was; "*That wasn't what the aim was of the CC& R's and the aim of it is not on trial today. .... It's something that will be brought up in the next trial. .... That's really irrelevant in this trial. I don't see the relevance in the trial*".

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<sup>8</sup> The "Association was awarded summary judgment claiming res-judicata, on Decemebr 3, 2010 in the quiet title suit.

(12/10/09 trial transcript, pg 36 line 21) Hadaller was objecting but was not acknowledged.

Hadaller had a document examiner and other evidence that would positively prove that Fuchs signed the covenant and the argument and authority to overcome the Association's assertion of it was not valid due also because it was not notarized. That was not there that day and Rasmussen stayed silent about that.  
(CP 234-248)(CP248-251)(CP 252-255)

Those court statement was made at the two hearings dated April 3, 2009 (RP 4/3/09 Pg 27 L.8- Pg 28 L.10) regarding a hearing on how issues of the water system, the amended covenant and the turnover of the books and records should be done on “.....to do and as such he thinks it's necessary to file a lawsuit to quiet title and to join his neighbors up there in doing that, **I think that needs to be a separate action, because it is unrelated to this**”. the court went on then came back and stated “... That's a separate action. **He can file a separate law suit and properly frame those issues. This lawsuit pertains to the books and records. That's where we're staying.**”

The Association, accordingly, pled on June 19, 2009 (RP pg 27 L. 20-22)  
“*Secondly, on that day [ April 3, 2009] the court ordered that there were issues of fact that necessitated a trial on the “Association” water management issue.*”

On June 26, 2009 Hadaller filed a complaint for quiet title according to the court's previous findings. (Dk 2& 14 of case # 09-2-00934-0) in the complaint was a cause of action for declaratory judgment to confirm the amended covenants standing. The Association answered the complaint acknowledging the issue or the Amended Covenants was in that quiet title suit.

Randy Fuchs' **Lied under oath** on 12/10/09 that he did not sign the amended covenant, that his signature is a forgery ( RP 12/10/09 pg. 65 L. 19-24) At that moment Hadaller possessed a declaration, 30 mi. east, and an agreement with a forensic document examiner ,in Medford Or.300 mi south of the court, to testify as an expert witness. That declaration is CP 234-247 and it states that Fuchs signed that covenant.

After the trial, the Court did not enter an oral finding regarding the amended covenant. But, he did make a finding that stated, "*I reserved ruling and said we need a trial on the issue of the water system ownership, **specifically, for that purpose***". ( RP 12/11/09 pg. 59 L.23)

On December 18, 2009 Hadaller dismissed his attorney Alan Rasmussen, after his closing argument RP 12/11/09 pg 44-56 Hadaller asked him "*What the hell was that!!?*" Rasmussen's reply was "*You just don't get it do you?*" After the trial he walked off without a good bye or a plan for a closing bill, no closing bill ever came. Who paid him? Where does that leave Hadaller? Hadaller still don't get it.

On December 30, 2009 hearing to enter the findings, Hadaller argued against the findings the Association placed and the conclusions of law. (CP350 ¶4) (RP 12/30/09 pg 21 L. 8-25).

The Court signed the Findings and Conclusions of Law and Judgment on December 30, 2009. On January 11, 2010 Hadaller filed a motion for partial new trial, reconsideration and/ or amendment of the judgment and (CP 360-436) (CP 450-452) argued a request for relief from the finding of the amended covenant. On February 5, 2010 the court denied all Hadaller's reconsideration and signed the order for that. On March 5, 2010 Hadaller appealed this.

In the Quiet title suit, On December 3, **2010** the Trail Court Granted the "association" and individuals, summary judgment of *res-judicata* precluding this issue being raised in the suit, the Trial Court ordered it to be raised in on 4/3/09.

#### IV. ARGUMENT

A. **This Court should reverse the Trial Court's finding that the new Mayfield Cove Estates Homeowners Association carried enough votes to incorporate the homeowners association or adopt their bylaws, elect officers, or transfer easements**

1.The Trial Courts finding the "associations" vote incorporated , adopted by- laws , elected officers or any further action taken on December 30, 2008 is a question of contract law reviewed de novo

The appellate Court reviews questions of law *de novo*, engaging in the same inquiry as the trial court.

*See Rosen v. Ascentry Technologies, Inc.1 Wash.App. 364, 177 P.3d*

765 Wash.App. Div. 1, 2008. "Absent disputed facts, the legal effect of a contract is a question of law that appellate court reviews de novo".

In establishing how many votes could be cast at the December 30, 2008 meeting the court must view the governing document in force at the time at and before the vote was taken. That is the original governing document the CCR's (EX3) on page 3 Article II section 2 establishes how the votes are to be allowed, one vote per lot. On page 3 article I section 5 defines a lot. "Lot" shall mean and refer to any plat of land, which has been assigned a tax parcel number, shown upon Exhibit A attached hereto and described above." Exhibit A is on page 14 which is the legal description of lot 1 and 3 of segregation survey. The parcel numbers "described above" include the parcel numbers that were assigned at the time the CCR's were recorded last. Accordingly it can be defined from that contract who holds which parcel number. Hadaller had parcels Nos. 28767-11, (110-16 & 110-22 V.L.<sup>9</sup>) 28767-12 (104 V.L.), and 28767-14 (135 V.L.) (**3 votes**). Lowe had 28767-13 (145 V.L) 28767-1-5<sup>10</sup> (141 & 143 V.L.) (**3 votes**). Fuchs had 28767-10 (**1 vote**) Greer had 28767-09 (**1 vote**) and Schlosser had 28767-07 (**1 vote**) the tally confirmed here by the terms of the governing document at the time, which was argued at the show cause hearing is different

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<sup>9</sup> This lot was being sub-divided into two more lots that became 110-16 Virginia Lee lane because the name Ashley Lane was denied by the Fire department as a duplicate in the district. & Fuchs objected to Eckard Lane. It is being counted as one lot/one vote.

<sup>10</sup> The CCR's had to be recorded prior to recording the plat 05-00017, which created Lowes lots, accordingly the sub parcel numbers were unknown and not on the CCR's 141 and 143 V.L. were subdivided from 28767-1-5 thus it is counted as two lots /votes.

than what the “association” argued and the court interpreted. The Trial Court erred in interpreting the CCR’s. (CP 55,56) (CP 3) ( Ex 3)

*See Seattle-First Nat. Bank v. Westlake Park Associates 42 Wash.App. 269, 711 P.2d 36 ,1985.* “Interpretation which gives effect to all of words in contract provision is favored over one which renders some of language meaningless or ineffective”.

*See Dice v. City of Montesano 131 Wash.App. 675, 128 P.3d 1253 Wash.App. Div. 2,2006.*

“In construing a written contract, the basic principles require that (1) the intent of the parties controls; (2) the court ascertains the intent from reading the contract as a whole; and (3) **a court will not read an ambiguity into a contract that is otherwise clear and unambiguous**”.

At the December 30, 2008 meeting (CP523-526) Hadaller was tallied 2 votes. Thus the vote tally on each issue was 80% in favor of passing. When it should have been and 6 votes for the group voting as the “Association” and 3 votes for Hadaller thus a 66 2/3/ in-favor margin. The difference in that percentage becomes important when one views the stipulated margin required to pass in the CCR’s . A 75 % in-favor vote is required to pass special assessments, as shown is article III section 4,(EX 3) A 75% in-favor margin is required to annex property. That is the only majority amounts stated in the CCR’s. It does allow the covenants to be amended “from time to time” with no stated majority. The CCR’s were amended on August 28, 2006 by 100% approval, which is the statutory requirement, when the governing documents are silent on the issue. The amended covenants provide for a 66 2/3 majority to amend the covenants but it is

also silent on adopting by-laws, thus the statutory 100% is required to adopt by-laws or incorporate. But the amended covenants were deemed to be invalid by the “association” and the trial court, can one look for relief there? It seems the Trial Court used the provision of margin of the amended covenant then killed the provider, it cannot do that by contract law. In order to adopt anything under it, it must have been enforceable prior to that time. If it was enforceable at the show cause, then it still has to be they cannot have their cake and eat too. Also the vote to adopt those by-laws and incorporate could not pass that way either because that same provision provides the developer/declarant continued control of the decisive vote to amend as long he has unsold lots in the plat.(Appdx. Pg A51 L. 19)

*See: Ross v. Bennett* 148 Wash.App. 40, 203 P.3d 383 Wash.App. Div. 1,2008 “In construing a covenant, the primary task of a court is to determine the drafter’s intent”

“Only in the case of ambiguity will the court look beyond the document to ascertain intent from surrounding circumstances.”

The trial court found, and Hadaller does not agree with the finding , that the by-laws could be adopted without amendment of the covenants . However there are 11 by-laws that are inconsistent (extra) to the provisions allowed in the CCR’s.It was the developer’s/ declarant’s intent to have very little regulation as can be shown by the CCR’s and after all lots are sold ,including the ones from lot 2 of survey all the owners should adopt by-laws according to all their needs.

The proposed by-laws change that dramatically. Hadaller does not oppose incorporation, nor the election of officers however the by-laws that are attempting to be applied to the development is much more restrictive and has many built in power tools to wield against neighbor than what he intended. He asks this court to deny this so the “Association” must consider everybody’s input. (CP 132-135) ( CP 136-138) (CP495-512) ( 527-532)

**See *Meresse v. Stelma*** 100 Wn. App. 857,866,99 P.2d 1267 (2000) “The law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes to existing covenants”.

The new by-laws had to change the covenants to exist. The “Association did amend the original covenants after the show cause hearing to do just that.

*See Shafer v. Board of Trustees of Sandy Hook Yacht Club . . . 76 Wash.App. 267, 883 P.2d 1387Wash.App. Div. 1,1994. “ **Express** reservation of power authorizing less than 100% of property owners within a subdivision to adopt new restrictions respecting use of privately owned property within subdivision is valid, provided that such power is exercised in reasonable manner consistent with general plan of development”.*

The key word is **express** in the holding of *Schafer* there were by-laws in place that provided for less than 100% approval of the new by-law being sought. In that case the court had a contract that provided for a less than 100% ratification. In the instant case, the original declarations were the only laws and state no express majority providing such relief. Thus this court must hold the majority that was necessary to adopt those by-laws , elect those officers , incorporate Mayfield

Cove Estates Homeowners Association is in fact 100%, or by stretch 75%.. Thus until all parties sit down across the table and hammer out an equitable set of by-laws that please everybody they shall not change from the original intent of the development. Which should be after all or 75% of the lots are sold.

*See Seattle-First Nat. **Bank** v. Westlake Park Associates 42 Wash.App. 269, 711 P.2d 36 Wash.App., 1985*“Interpretation which gives effect to all of words in contract provision is favored over one which renders some of language meaningless or ineffective”.

This court is asked to help create an equitable solution to this problem. Hadaller suggests the Court should consider what is on the legislature floor for guidance. Senate House bill 6054 And Committee Report (appdx Pg.A) has the intention to remodel RCW 64.38, which a poorly drafted law that is causing as much damage as good, the new bill adds good faith, at least written in it, we could use a little of that in this case. The new bill also addresses a problem we have here. That is Hadaller’s attorney, that drafted the amended covenants, gave the developer/ declarant a 100% majority vote for change of the CCR’s. However because Hadaller has very substantial investment, unreturned, into the construction of the plat he must have something remaining in the document to protect his investment. Hadaller would agree the new statutory amount of control stated in Section 20 of SB 6054 is equitable.(Appdx. Pg.A 51 L.19- P.52 L. 15)

Accordingly Hadaller requests this court to find that the existing proposed vote to incorporate Mayfield Cove Estates, adopt those specific by-laws and elect

those officers is null and void. This Court should reverse the Trial Court's finding that the "Association" is the governing authority in Mayfield Cove Estates.

**B. The trial court erred when it made findings that Hadaller created Mayfield Cove Estates water System No. 2 ownership in the Associations name. The trial court furthered that error when it found that Hadaller also Dedicated or transferred the title to the purchaser when he sold the lots the system provided water**

**1. The trial Court's finding that John Hadaller does not own Mayfield Cove estates water system #2 is a question of Law Which is reviewed de novo**

The creation and responsibility of the class B water system named Mayfield Cove Estates Water System #2 is strictly governed by WAC 246-291-120, 246-291-140, 246-291-200 and LCC 16.10.400. Lewis County Environmental Health agents are strictly governed by those statutes. WAC 246-291-120 and WAC 246-291-200 states the procedure the developer of water system #2 must follow to establish it. The relevant procedure was this.

(1.) Pay for and obtain and complete a well site inspection form for the water source. Hadaller did that and it was in the record to the court . (CP.297-302) (CP376- 378) which confirms Hadaller from the very beginning established the system in his name.

(2.) Hire a registered engineer to supervise, complete the documents to comply with statutes and file a report, which report contains the information the county agent is to work off from when she reports the system to the State Department of

Health. (CP 303-312) Again CP380-385 was presented to the court for correction of the Courts finding Hadaller did not create system #2 in his personal name. That exhibit is the engineers report that reports the ownership to the government agencies, which established the system in John Hadaller's name , it is on land owned by Hadaller. Thus the government agencies were informed from the beginning that system was owned by John Hadaller. In the engineer's report and at (CP 384-385) is a "Notice to Future Property Owners" which tells everybody there after that John Hadaller owns the system and intends to retain ownership through subsequent property transfers unless specifically noted otherwise. This document was not only filed with the report but was also attached to the CCR's (EX.3) on page 16 and 17. This document is in the title report twice and in the deed and real estate sales contract of the purchaser of all three lots Hadaller sold from that system. As well as Hadaller gave and discussed the buyer with this document at each sale. The buyer was attorney David Lowe he should not claim ignorance. The Court had the (Ex 3) CCR's in his hand when he cross-examined Hadaller on the stand. He asked Hadaller about retaining ownership of the both systems in general. (RP 12/ 11/09 pg. 20 L. 18-Pg 20 L.25) Hadaller began to explain both systems creation from the beginning<sup>11</sup>. The Court cut him off very

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<sup>11</sup> Only System #2 is up for review, all six lots are properly connected to system #1 and it has been turned over to the association to own and manage. Hadaller is asserting the association has the management responsibility but he will own them until all six of his designed connections are completed on each system. There are two more available on system #2 which is one reason he retained ownership.

rudely and the Court shaped the testimony very prejudicially preventing him from presenting his own case, as can, be seen on RP 12/11/09 pg 22 L. 25. Hadaller's rights were abused by the discretion of the Court. Hadaller would have testified to the documents, identified here, that were in evidence and were in the court room to be submitted into evidence, which were later submitted for the motion for a new trial as follows, (if the court would have allowed him.)

*“ I began creation of the first water system, #1, in the name of the association, I was the entire association then, at the advice of the engineer, Ron Pollack. But in the design stage we realized we would have to provide for a storage tank and additional pump and very expensive equipment to provide for lots 5 and six of the system. I could only create four lots at that time then five years in the future I would complete the system,<sup>12</sup> and add the final two lots. I felt I should retain ownership until then. Thus a lot of documents were filled out in each name at creation of system #1 only”. That system was not relevant because Hadaller was about to give it to the association anyway after connecting fully.*

*“From experience of system #,1 Pollack and I created system #2 in my personal name from the very beginning. The documents in the well site inspection report, the ownership documents and statements in the Engineers Report and the Notice to Future Property Owners in the CCRs confirm I owned it from the*

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<sup>12</sup> That is exactly what happened and was actually happening with the Courts involvement at the time.

*concept and never conveyed title. The dedication language of the plat did not nor was it meant to convey it. The two documents that the Association presented which were filled out by a third person from their personal judgment, of who was the owner, did not convey the ownership., I overlooked the contract language on the satellite management contract, completed by them, and the “Water Facilities Inventory Report”, completed by Sue Kennedy, Lewis County agent, because I was in Harborview recovering from 3<sup>rd</sup> degree burns on 40% of my body. I was out of commission for several months and very stressed. I was allowed to correct those two documents by the agencies responsible for those minor errors.” Those two errors do not show a conveyance nor did they intend to.”*

Those are the facts Hadaller should have been allowed to present to the Trial Court, but was cut off and prevented from testifying on his own behalf. The existing facts were obfuscated by the Association attorney and the Court bought into that and took the prejudiced position that led it to cut Hadaller off and prevent him from a fair trial. The Trial Court itself created an improper, prejudiced record by stating Hadaller misled the lot purchasers. (RP pg 21 L. 21- Pg 22 line 21) The other answer he was prevented from speaking at that time and is true is, “ *The Schlosser ’s Greer ’s, Rockwood”s and Fuchs’ lots are on System #1, not at issue. ,They are being given their system because its complete. The Lowes are the only purchaser ’s and were well noticed that system #2 was owned and being retained as owned by me and intends to be until*

*the last two connections are used by only me.*” The way the Court did it, by cutting off Hadaller’s answer much more than is demonstrated by the transcript, Hadaller’s rights were taken from him and he is grateful for this review to correct a very wrong civil procedure.

*See Leda v. Whisnand 150 Wash.App. 69, 207 P.3d 468 Wash.App. Div. 1, 2009.* “A trial court’s refusal to allow testimony is reviewed for abuse of discretion”.

“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds”

The Trial Court abused its discretion when it prevented Hadaller from his one chance he had to present his testimony and his evidence. As was shown in RP 12/11/09 Pg 21 -22. Because of that action Hadaller was subjected to improper findings. ( CP 339 ¶18-23) That abuse of discretion was furthered when the Court denied Hadaller’s motion for partial new trial.

The Court furthered that error (RP 12/11/09 pg.22 line 19) where Hadaller’s testimony is also obfuscated it should be written and read as A. *“I don’t see how.....” “I’m saying it’s something different. I don’t understand how I’m contracting the CCR’s”*

The Engineer’s report confirmed the system #2 was created and held in Hadaller’s name and that it was a totally separate system from System #1. Part of it was in evidence the remainder was in the court room being prevented from

entry. However it was presented in Hadaller's motion for reconsideration. All the ownership documents in the engineer's report were previously submitted by declaration for previous hearings. ( CP 280-312) ( CP 437-464) ( CP187 – 216)

The Association argued and the Court erred finding Hadaller dedicated the system when he filed the plat #05-00017.( CP 336 ¶10,11)(CP339 ¶19-21) The Association presented a miniaturized version of the plat completely unreadable as far as the dedications are concerned ( Ex 2), Hadaller clarified that when he submitted submitted an enlarged portion of the dedication clause of the plat map.(See CP 429-430) ( Appdx. Pg B) Hadaller did not dedicate System #2. He will when he completes all six connections. But he has not done that yet.

*See Sweeten v. Kauzlarich 38 Wash.App. 163, 684 P.2d 789 Wash.App.,1984.* "A dedication does not exist unless there is an intention on part of the owner to devote his land, or an easement in it, to a public use, followed by some act or acts clearly and unmistakably evidencing such intention, and an acceptance of the offer by the public" ..

"Acceptance of a common-law dedication may arise by express act, by implication from acts of municipal officers, and by implication from user by public for purposes for which property was dedicated"

The plat map is clear Hadaller dedicated the easement for accessing the utilities but not the Water system #2. His filing of the water system #2 documents, above, expressly precludes any claim of an express dedication. The Lowes and Hadaller are the only users of water system #2 . Lowe nor any other

can show a dedication by common law. Lowe was notified of Hadaller's intention of owning System #2 in his title reports, his real estate contract and his deed. In two separate clauses.

Nor can they lay claim to a conveyance because the system was specially mentioned as an exception to conveyance from Lowes titles. Lowe cannot show and the Trial Court erred in its finding that Hadaller is estopped from claiming he kept ownership by accepting and keeping payment for water. That fails because Lowe sent Hadaller one check for water and road assessment. That check was improper and Hadaller sent it back. Lowe refused to pay any more. The fact is in the record he did not ever pay for any water, even if that would support a finding of estoppels. ( CP 46-48) ( CP 1509 L 11-13)

The Trial Court abused its discretion when it prevented Hadaller from his one chance he had to present his testimony and his evidence. As was shown in RP 12/11/09 Pg 21 -22. Because of that action Hadaller was subjected to improper findings. That abuse of discretion was furthered when the Court denied Hadaller's motion for partial new trial.

*"Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed":RCW 64.04.010*

Lowe's deed and Real estate contract was is in the (CP 203- 211) record and was at trial to be offered. The water system was expressly reserved

by Hadaller as clear and obvious as it can get on schedule "B" exceptions. To both the Real estate contract and the title report. The Court prevented that evidence from being raised at trial and the related testimony by Hadaller. Then The Trial Court refused to grant Hadaller a partial new trial when presented the evidence.

That is both an error of law and abuse of discretion when the Court prevented Hadaller from testifying his facts of how the System #2 was created and held in Hadaller's name.

Hadaller Requests this Court to make a holding he owns Mayfield Cove Estates Water System #2 and reverse the Trial Court's decision.

As a result of that Hadaller should be the prevailing party at trial and the award of attorney fees should be reversed as well.

**C. The Trial court erred by allowing Plaintiff, the "Association" to raise, the issue of the validity of the amended Covenants at trial when the parties and the court had plead and understood they were to be tried in the co-pending quiet title case, that created an element of surprise that prevented Hadaller's expert witness and authority from being heard.**

The facts described above regarding the validity of the amended covenant supports the argument that the Association should not have been allowed to present its case regarding the Amended Covenant at this trial. It was being pled in the co-pending Quiet Title case as per the Courts direction on April 3, 2009, and Plaintiff's acknowledgment on June 19, 2009 and agreed by letter on November 17, 2009. Then confirmed by the statement of issues in the pretrial

briefs on December 1, 2009. It was raised at the trial, none the less, by the Association by surprise. ( RP 4/3/09 pg.16 L. 4 - Pg 18 L. 16 & Pg.27 L. 8 - Pg. 28 L. 10) (RP 6/19/09 Pg. 3 L. 20-22) ( CP 432-436) (CP1360-1393)

Hadaller had previously obtained the services of a forensic document examiner to verify Fuchs' signature, that the court had stated a question of, in an earlier proceeding. ( CP 234-248) That expert witness was not scheduled because he was not supposed to be. He will, confirm the missing link to validity for that document. The issue of whether it needs to be notarized also needs to be heard on the merits. Hadaller has excellent authority showing it does not which also needs to be heard. (See Johnson v. Mt Baker Park Presbyterian Church 113 Wash. 458, 194 P. 536 ) The well settled holdings of *Johnson* are parallel to the facts of this case. All four parties of the Amended Covenant acted with regard that covenant was valid for almost three years and acted in regard the terms of the covenant were valid, which were first orally agreed at sale of the lots. That amounts to six years of relying on the understanding that Hadaller was the developer only one to add property to the roads he built and the Schlosser's and Greer's would have their easement removed by Hadaller only. The Amended Covenant simply placed the original understandings in writing. The Schlosser's and the Greer's both relied upon those terms when they, purchased their lots at a substantially discounted price, then laid out their lots directing Hadaller to place their septic and parking area to the back

allowing just enough room for a house at the front . Their anticipated decks will be placed over the easement they covet the removal of. That allows view of the lake from the deck. Fuchs relied upon and received the benefit of the terms when he moved into the home as was a condition of sale and received immediate occupancy as was the condition of the amendment to the covenant shown to be agreed upon in writing @ (CP 94).His verbal agreement reduced to writing was he would not interfere with Fortman's and Hadaller's business affairs, which he breached. The Courts holdings in *Ebel* support the argument:

See: *Ebel v. Fairwood Park II Homeowners' Ass'n* 136 Wash.App. 787, 150 P.3d 1163 Wash.App. Div. 3,2007. "A party ratifies an otherwise voidable contract if, after discovering facts that warrant rescission, the party remains silent or continues to accept the contract's benefits."

Hadaller relied upon the early understandings and subsequent writing when he developed phase two by subdividing lot 3 of segregation survey knowing he would not profit from that phase until he obtained segregation lot 2 and sold lots from the road he built across it in the second phase. The document was verbally agreed upon and passed around in the fall of 2005 . Hadaller filed for SP 05-00017 on December 21, 2005 ,spending over \$224,000.00 assuming the protection of that contract. Very very much specific performance was completed expecting the benefits of the agreement. Too much to turn it back at this point

because the question the courts have never settled on is whether a covenant created alone must be acknowledged. The courts are split on that.

See William B. Stoebuck's "Law of Property §3.2... .." *Washington's position on the Statute of Frauds question is quite unclear, especially as the question relates to real covenants. Much depends upon an analysis of the leading case of Johnson v. Mt. Baker Park Presbyterian Church, the only Washington case found that expressly discusses the question. Johnson is not a real covenant case but a case that involved equitable restrictions [this Amended Covenant is in fact an equitable restriction] in a residential subdivision, Moreover, in determining that such restrictions existed, the supreme court did not rely upon either of the usual theories, implied reciprocal servitude theory or third-party-beneficiary theory, which will be explained later in this chapter. Rather, the court found existence of an implied covenant in an unusual way, in what it termed "equitable estoppel." There was a clear statement that the covenant was not an interest in land, followed by an express holding that the Statute of Frauds for land did not apply. Presumably the holding still applies to the creation of equitable restrictions in Washington, ..... The reason the Statute of Frauds question seldom arises is that most covenants that would be running covenants are in fact contained in documents that comply with the Statute. They are usually in documents, such as deeds, easement agreements, subdivision plats, and leases, that fully comply. Moreover, even when covenants are created informally, [such as this ]they often may be saved by the doctrines of part performance and equitable estoppel. These doctrines apply to the creation of easements, as well as of other interests in land, and there is no reason they should not apply to the creation of running covenants. Thus, as a statistical matter, the Statute of Frauds will seldom prevent the creation of running covenants.*

See Leight45on v. Leonard 22 Wash.App. 136, 589 P.2d 279 Wash.App., 1978.

The court held that "Although recorded instrument concerning height restriction covenant was not acknowledged, under applicable curative statute recorded document served as notice to subsequent purchasers". RCW 65.08.030

The Amended covenant was recorded in the Auditors file s on August 28, 2006.

The Lowes bought their lots on October 23. 2007, with notice of the Amended

Covenant by their title report, it was placed in their Real Estate Contract and Deeds as well as was fully briefed by Hadaller of the terms of the document, Hadaller relied upon to protect his entire life's assets, prior to buying. ( CP 205 ¶7)( EX 3)

The original parties and Fuchs are precluded from disputing the validity of the document by estoppels, the Lowes are bound by notice of the standing of this document. It has not been considered yet, on the merits and accordingly, there should be a trial on the merits of the document.

One question at this stage is whether Hadaller's personal objection made ,on RP 12/ 10/09 Pg. 36 L. 21 -25, suffices for a proper objection to satisfy CR 59(a) 1,3,or 9 requirement, to specifically object to the element of surprise and then respond to the Courts ruling accordingly. The Court heard the objection but did not acknowledge it . Hadaller repeated himself three times, but no response was made from the Court nor Hadaller's attorney. **Did the Court have a duty to respond to that statement? and did the fact Hadaller specifically pled and stated it was to be an issue in the quiet title case preserve it for consideration in that case? Does it preclude the defense of *res-judicata* from being brought in the co-pending quiet title case?**

Cheryl Greer was asked to testify for the "Association". She testified she was an accountant for a community college in California, ( RP12/10/09 Pg. 18 L. 8-11) she testified she read the language of the proposed amended

covenant she also testified she misunderstood and subsequently disagreed with the provision 6, and she testified she signed it. The Court prejudicially argued her into making a statement she was misrepresented into signing the document.( RP 12/10/09 Pg. 31 L23- Pg33 L. 13)

*See: Edwards v. Le Duc 157 Wash.App. 455, 238 P.3d 1187 Wash.App. Div. 2,2010.*”Irregularity in the proceedings for which court should consider granting new trial include instances of a trial court's lack of impartiality that has a prejudicial effect on the fact finder.”

At that moment, there was a file 30 miles away containing a regular string of e-mails between Hadaller and Mrs. Greer dated from the delivery of the proposed amendment, which was October 28, 2005 to January 6, 2006, the date her and her husband signed the original. The conversations in the e-mails support her objective manifestation of intent was to adopt that amendment to the CCR's, contrary to her misguided testimony. That evidence was not at trial because the supporting evidence of this issue was being addressed in a separate suit, as the court openly and very affirmatively stated it was going to be done. The Court was, or should have been, aware of that fact and ignored it. It was as if there were two attorneys opposing Hadaller, one on the bench.

Hadaller has been put in a position of prejudice that was done by more than mere negligence. This Amended Covenant was protecting Hadaller's entire life's work by preventing another developer from just moving in and taking over all of Hadaller's near complete work in developing Mayfield Cove

Estates. The attorney claiming to be the “attorney for the homeowners association is in fact at one with the competing developers hiding in the Homeowners association costume No 64.38. David Lowe has invested over \$550,000.00 into adjoining land, Randy Fuchs owns the five acre parcel contiguous to the east , his partner and owner of the resort busting at the seams for space directly across the lake , Gerald Rothmeyer owns the five acre parcel that connects the subject plats to the other county road to the east about 1000 feet. They all would benefit hugely by connecting to Hadaller’s parcel on the lake thus allowing a marina<sup>13</sup> to serve their potential subdivision. Their potential gain is over a million dollars. Hadaller’s ownership is within the law, they have the money . Who will prevail? That contract is all that is material protecting Hadaller’s ownership, without that contract the law simply provides the party that owns Hadaller’s present land to control who may add to his road, if this appeal fails they will own that.

This agreement was placed into effect when Randy Fuchs came pretending to be a honest man in need. Hadaller felt he owed him a favor and gave him the benefit of the doubt. The rest is recorded above. This document was drafted particularly for that purpose and albeit should have been notarized but lack of acknowledgment will not prevent it from being valid. Hadaller’s

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<sup>13</sup> That thanks to Hadaller’s three year \$20,000.00 + work to re-designate the shoreline to allow docks

document examiner has beyond a reasonable doubt testimony to confirm it was signed. There certainly are the elements for a trial on the merits of this document. Was it an abuse of discretion for the Court to not allow Hadaller a new trial on this issue? Was justice served in equity between the parties when Hadaller properly assumed the document was not on trial and did not prepare and the Association snuck testimony in, obtained a free pass from Hadaller's attorney and Court who ignored Hadaller's pleas to prevent what they were doing, then when Hadaller filed a motion for new trial should it not have been brought at the Trial Court's discretion? Did the Trial Court abuse that discretion? Did Hadaller as a matter of law make a proper objection?

*See Leda v. Whisnand 150 Wash.App. 69, 207 P.3d 468 Wash.App. Div. 1, 2009.* "A trial court's refusal to allow testimony is reviewed for abuse of discretion".

"A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds"

Hadaller is aware of the legal consequences the court does not provide regarding attorney negligence he is not pleading for relief from his attorneys negligence, rather he is pleading on the strips of grounds left standing that possibly have not been crumbled by his negligence. There certainly exist some and Hadaller would appreciate the full relief that any may provide.

There are grounds to require a trial on the amended Covenant issue. Hadaller respectfully asks the Court to remand this issue for trial.

**D.The trial Court erred when it awarded attorney fees under authority of RCW 64.38.050 to an “Association” that was establishing itself, which was more of a hostile takeover of a development by competing developers which is contradictory to the legislatures intent of the provisions for RCW 64.38**

Hadaller asks this Court to consider the above facts and consider carefully whether the legislature actually intended RCW.64.38.050 to provide fees in this type of case. Where a group of developers (Lowe and Fuchs) and homeowners, with personal interest in their easement exchange with no standing as a homeowner association, attempts to overthrow an existing homeowners association, receives many awards of fees from repetitious hearings and causes for legal actions as they continue to do in the Quiet title case with this law.

RCW 64.38 .050 begins by stating “*in an appropriate case*” How can a reasonable mind review the legislatures intent, of RCW 64.38 view the pattern of case laws this laws has been applied to<sup>14</sup> then describe this case as an *appropriate case*? This law was intended to protect non-profit associations to enforce their existing covenants and by-laws against established law, not attempt to take ownership of a water system and development by a separate new association. This law is an attorney’s playground for abuse and Lowe is having a ball. They have ran up over \$120,000.00 in fees counting their awards and what Hadaller has paid out or claimed owed by his first attorney Miller. They also brought a separate frivolous suit that won Lowe an easement piece

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<sup>14</sup> There are nine cases in Washington discussing RCW 64.38. none are reported. All nine are for enforcement of long established covenants or by-laws by non-profit associations. Each of the property owners personally financially gained by their actions in bringing this suit.

that cost Hadaller over \$50,000.00 in fees etc. in a separate suit in 2009. David Lowe crafted the “final judgment “ to be a middle order in the case when Hadaller appealed from the final order, that decided rights, Lowe pled and succeeded getting it dismissed as untimely. That adds the total of fees and costs sanctions, damages etc. to over \$170,000.00 Hadaller has supersedeas stays on his property and has spent more time defending his self from their actions pro se than working his construction business this year. Hadaller is out of credit for attorneys, he placed a second and third mortgage on his home.

Their settlement negotiations lead to one thing. They will take Hadaller’s property the same as if Hadaller defends himself and loses, just differently. The big question is. Does the law of real property ownership protect the owner from opponents with much money and an attorney for a partner?

The bulk of the fees in this case were awarded relating the ownership of the water system #2 Hadaller knows and has shown, he owns that water system and the Trial Court failed to protect that private property right. Hadaller delivered the other books and records lickety -split once he had Fuchs’ signature verified. The fees for the books and records were comparatively small, to the water system trial. Hadaller also is not opposed and never denied the “association” managing the water systems. However the way the by-laws are ratified was improper . They did not have the standing to take over the association and now claim Hadaller does not have a vote at all.

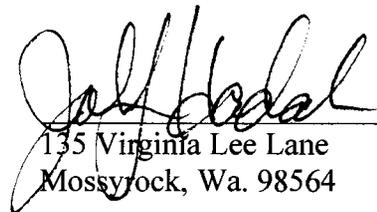
Hadaller prays this court has the authority before it to correct many wrongs .  
This is an inappropriate case to use RCW 64.38.050 to award fees. Hadaller  
ask's this Court to reverse the fees awarded due to the trial on the water system.

#### V.CONCLUSION

Hadaller requests this court to consider the relevant facts and the  
argument of sections A above find that the existing proposed vote to incorporate  
Mayfield Cove Estates and adopt those by-laws and elect those officers failed  
by vote majority per the Original CCR's and Statute. This Court should reverse  
the Trial Court's finding that the "Association" is the governing Authority in  
Mayfield Cove Estates. Hadaller requests this Court to consider the facts and  
argument in Sections B above and hold he owns Mayfield Cove Estates Water  
System #2 and reverse the Trial Court's decision. As a result of that Hadaller  
should be the prevailing party at trial and the award of attorney fees should be  
reversed as well. There are grounds to require a trial on the amended Covenant  
issue. Hadaller respectfully asks the Court to consider the facts and argument in  
sections C above and hold the Amended Covenant document did not have fair  
consideration and justice should could only be served by remanding this issue  
for trial.

Respectfully submitted:

Dated January 3, 2011

  
135 Virginia Lee Lane  
Mossyrock, Wa. 98564

Ph. & Fx (360) 985-2252

## **APPENDIX**

**PAGE A**

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**SENATE CONCURRENT RESOLUTION 8423**

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Passed Legislature - 2006 Regular Session

**State of Washington                      59th Legislature                      2006 Regular Session**

**By Senator Fairley**

Read first time . Referred to .

1            NOW, THEREFORE, BE IT RESOLVED, By the Senate of the State of  
2 Washington, the House of Representatives concurring, That:

3            (1) The homeowners' association act committee is created. The  
4 purpose of the committee is to review the homeowners' association act,  
5 chapter 64.38 RCW, the uniform common interest ownership act, and  
6 current issues concerning homeowners' associations as defined in RCW  
7 64.38.010 including, without limitation, the method and manner of  
8 amending restrictive covenants, voting, alternative dispute resolution  
9 mechanisms, communications between homeowners' association boards and  
10 association members, the budget ratification process, potential  
11 conflicts between the homeowners' association act and other laws that  
12 may be applicable to the organizational form of the association, and  
13 the need for reforms regarding the process, in which liens are placed  
14 on property for unpaid association dues against a new seller for a  
15 previous owner's delinquencies, as well as a review of the required  
16 disclosures on the sale of real property within a homeowners'  
17 association.

18            (2) The committee shall consist of the following ten members:

19            (a) One member of the Senate appointed by the President of the  
20 Senate;

**EXHIBIT   1**

1 (b) One member of the House of Representatives appointed by the  
2 Speaker of the House of Representatives;

3 (c) The following six members appointed by the governor:

4 (i) A representative of the Washington state chapter of the  
5 community associations institute;

6 (ii) A representative of the Washington homeowners' coalition;

7 (iii) A representative of the residential development industry;

8 (iv) A lawyer experienced in representing the interests of  
9 homeowners' associations in their dealings with homeowners;

10 (v) A lawyer experienced in representing the interests of  
11 homeowners in their dealings with the boards of homeowners'  
12 associations; and

13 (vi) A person, who shall serve as the chair of the committee, who  
14 has expertise in homeowners' association law; and

15 (d) The following two members appointed by the governor upon  
16 recommendation of the chair of the senate financial institutions,  
17 housing and consumer protection committee, and the chair of the house  
18 judiciary committee: Two constituents who are members of a homeowners'  
19 association and who are not serving on a homeowners' association board.

20 (3) Legislative members of the committee shall be reimbursed for  
21 travel expenses in accordance with RCW 44.04.120.

22 (4) The committee shall examine the issues referenced in subsection  
23 (1) and whether any changes should be made to the homeowners'  
24 association act. The committee shall deliver a report of its findings  
25 and conclusions and any proposed implementing legislation to the  
26 appropriate committees of the Senate and House of Representatives by  
27 September 1, 2007.

--- END ---

**Homeowner Association Act Committee**

**Final Report**

December 2007

**Homeowner Association Act Committee  
Final Report  
December 2007**

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## **I. INTRODUCTION**

### **A. Background**

Homeowner Associations are a rapidly growing form of housing in Washington State. These associations are typically formed as a result of restrictive covenants that developers record against property in subdivisions. The association's members are the owners of lots within the boundaries of the property subject to the covenants. Once the developer has relinquished control, associations are managed by its board of directors elected by the association's members. The rights and obligations of the association, its members and its board of directors are defined by state law and by the covenants recorded for the subdivision. In addition, the associations may have Articles of Incorporation if it is incorporated, bylaws, and rules and regulations. These documents collectively establish the manner in which the association will be governed, and how it will carry out its primary function which, generally speaking, is the management, maintenance, repair and replacement of common areas and structures (e.g. recreational facilities) and design review and architectural control.

Unlike condominiums and condominium associations, there are no mandatory statutory requirements for the contents of the restrictive covenants that are recorded against residential subdivisions. This permits a great deal of variation between associations. To provide greater uniformity for associations, especially on vital management issues, the Legislature adopted the Homeowners' Associations Act (the "Act") in 1995.

Since that time, an increasing number of proposals to modify the Act have come before the Legislature in response to constituent concerns. During the 2005-06 Biennium alone, 12 bills were introduced to address issues such as removal of discriminatory language from restrictive covenants, displays of political yard signs and of the United States flag, restrictions concerning roofing materials, the process for amending restrictive covenants, disclosure of homeowner information, and alternative dispute resolution mechanisms.

To ensure a comprehensive approach to modification of the Act and opportunities for public input, in 2006 the Legislature established a study committee known as the Homeowner Association Act Committee (the "Committee"). (A copy of the Resolution establishing the Committee is attached as Exhibit 1.) The Legislature ensured that the Committee's composition would provide a balance of perspectives. Members were selected based on their experience with homeowners associations, both as homeowners and board members, and on familiarity with this area of the law.

### **B. Committee's Work**

#### **1. Tasks**

The Committee was asked to review the Act, the Uniform Common Interest Ownership Act, and various issues concerning homeowners' associations and to evaluate whether any changes should be made to the Act. The Legislature specifically requested review of the issues such as:

- Required disclosures on the sale of real property within homeowners associations
- Alternative dispute resolution mechanisms
- Methods for amending restrictive covenants
- Budget ratification and assessment (i.e. "dues") collection processes

## 2. Committee Members

The Committee originally consisted of 10 members, but two resigned in 2006 and the balance of the Committee's work was performed by 8 individuals. They are (in the order listed in SCR 8423):

- Marion Morgenstern, attorney experienced in representing homeowners and homeowners Associations, Chair
- Senator Karen Fraser, member, Washington State Senate
- Rep. Toby Nixon, member, Washington House of Representatives (2006)
- Rep. Larry Springer, member, Washington House of Representatives (2007)
- Terry Leahy, representative of the Community Associations Institute, Washington Chapter
- Todd Hobert, representative of the Washington Homeowners Coalition
- Steve Rovig, representative of the residential development industry
- Sanford Levy, attorney experienced in representing homeowners
- Nancy Rust, member of a homeowners associations

## 3. Meetings

The Committee met for the first time on July 24, 2006. Meetings were held monthly and then twice per month, the last meeting held on August 20, 2007. It is safe to say that Committee members spent thousands of volunteer hours on the Committee's work during the past 14 months.

The Committee's meetings were open to the public and were regularly attended by interested individuals and stakeholder groups. Once per month a portion of the Committee's meeting was set aside to receive public comment. The Committee's work, including its decisions, meeting minutes and draft recommendations were also communicated to the public at large via a Yahoo Group website. More than 200 members of the Yahoo Group have monitored the Committee's work and provided input, suggestions and comments on the draft recommendations. The Yahoo Group members include homeowners, board members, realtors, attorneys representing developers, homeowners and associations and other interested stakeholder groups.

## 4. Decision Making Process

The issues the Committee was asked to address necessarily involve balancing the needs and interests of the individual against the needs and interests of the group as a whole. These are not easy matters to decide as striking the "right" balance is often difficult to define and to achieve. In its work, the Committee was guided by three overarching principles: (1) avoid recommending changes to the Act that could have unintended adverse consequences; (2) consider the competing needs of associations and their members and find an appropriate, equitable balance, and (3) adopt recommendations through unanimous agreement whenever possible. For the most part, the Committee's work and recommendations were unanimous. Unanimity was not easily achieved. It required a great deal of discussion, debate and compromise by the Committee acted through formal motions and majority vote.

Balancing the competing needs and interests involved in the issues under consideration required compromise by all Committee members. To honor those compromises, the Committee agreed at the beginning of its work (and reaffirmed at the end) that its recommendations would be presented to the Legislature as a "package" and would be accompanied with a request that the Legislature adopt or reject the recommendations as a whole.

(6)

We recognize that the Legislature bears the final responsibility for turning the Committee's recommendations into law should it chose to do so, and for the nature of any changes that are made to the Act. As the legislature takes up that responsibility in the upcoming session, the Committee would like to emphasize that the Committee's recommendations are the product of hard-won compromises and the thousands of hours devoted by the Legislature's uncompensated appointees. We urge the Legislature to consider the Committee's recommendations carefully, to honor the compromises that they reflect, and to not cherry-pick the less controversial recommendations from among those that might be more controversial.

**C. Committee Recommendations**

Our recommendations, set out below, form the basis for the specific recommended statutory changes embodied in the attached restated Homeowners Association Act.

Each recommendation is intended to address a specific issue. The specific issue a recommendation addresses is stated in bold above the recommendation. In addition, we have provided commentary which is not part of our recommendations, but which may be helpful in understanding what we intended or why we did what we did.

Living in an association means abiding by its standards. Those standards are found in the law and in an association's own governing documents. The Committee heard of numerous problems involving associations and thought of various solutions.

We found problems in the standards themselves. We found problems in how the standards are applied. We found some buyers misunderstand what becoming an association member means. And we found some complaints about associations are ill suited to a legislative fix.

To more clearly present our recommended solutions, we group our recommendations based on the four categories just mentioned:

- (1) Problems with the standards themselves;
- (2) Problems with how the standards are applied;
- (3) Problems arising from buyer misunderstandings; and
- (4) Problems best addressed through means other than legislation.

**II. SUMMARY AND EXPLANATION OF RECOMMENDATIONS**

**A. Problems With The Standards Themselves**

1. The Law Is Unclear

<b>Recommendations:</b>	<b>Comments:</b>
<b>R-1. Add definitions.</b> The Act should be amended to add definitions for certain terms, including "governing documents," "lot," "owner," "assessment" and "rules," and to add language that the dollar amounts stated in the resale certificate part of the statute can be	Disputes sometimes arise between association volunteers (e.g., board members) and homeowner members because the intended meaning of terms contained in the Act is not clear. By defining important terms used in the Act, the intended meaning of provisions in the

Recommendations:	Comments:
adjusted for inflation based on some specified index (e.g., the Consumer Price Index).	Act will be better understood by those who must comply with the Act.
<b>R-2: Reconcile conflicting laws.</b> The Act should be amended to change existing sections of the Act that set notice periods that are inconsistent with the notice periods established in the non-profit corporations statutes for the same actions.	The Committee also recommends that the Act, at RCW 64.38.025(3) and 64.38.035(1), be amended to provide for a ten day to sixty day notice period, so that the notice period for these actions in the Act matches the notice periods for these actions in the non-profit corporations statutes.
<b>R-3: Require “good faith” conduct.</b> The Act should be changed to add a requirement that every contract or duty governed by the Act imposes an obligation of good faith in its performance or enforcement.	An association acts largely through decisions of its elected board. Board decision making necessarily involves exercising discretion. Some owners complained to the Committee that boards in their associations abused their discretion in making decisions and taking actions that affected owners. Both UCOIA and the Washington Condominium Act obligate boards to act in “good faith” when exercising association authority. Good faith, as used in this Act, means observance of two standards, “honesty in fact” and observance of reasonable standards of fair dealing. While the term is not defined, the term is derived from and used in the same manner as Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.
<b>R-4. Use “Safe Harbors” to Guide Conduct.</b> The Act should create <i>optional</i> processes which, if followed by an association, will be deemed to satisfy a general standard imposed by the Act. Specifically, this approach is used by the Committee in setting out optional “safe harbor” processes that an association can employ in creating rules, in imposing fines and in resolving disputes through mediation.	A recurring problem in setting legal standards for associations is that little guidance is given on what an association must do to actually comply with the standards. Many associations lack resources to consult with lawyers on what they must do to meet standards. On the other hand, many associations that had the resources worked with their professionals to craft procedures that suited the needs of their particular communities. The Committee, throughout its recommendations, uses the “safe harbor” approach. That is, the Committee sets out an <i>optional</i> procedure associations can elect to follow to comply with some duty the Act creates. Using the optional procedure is per se compliance with the Act. An association can use a procedure of its own creation, but it then runs the risk that it might one day need to demonstrate that its procedure complies with the Act.
<b>R-5: Establish a standard for determining a rule’s validity.</b> The Act should be amended to provide that a rule adopted by a board is valid and enforceable if certain requirements	An association’s enforcement of its rules is a significant source of disputes between associations and their members. These disputes frequently involve challenges not only

Recommendations:	Comments:
<p>are satisfied. The requirements are that the rule be in writing, the rule be consistent with the governing documents, the rule be adopted in substantial compliance with the requirements of the Act, and that the association's members have been provided advance notice of the rule, and an opportunity to comment on the rule, before the rule can be enforced.</p>	<p>to the association's enforcement process, but challenges to the validity of the rule that the association is trying to enforce. The Committee saw a need to articulate a standard by which challenges to the validity of a rule might be determined. (This is also one change to the Act where the Committee created a "safe harbor" procedure an association could follow in creating a rule and, in so doing, establish compliance with this standard.) In addition, the Committee saw a need to provide owners with greater involvement in the rule-making process. To address this need, the recommendation includes a process through which the association's members can reject a proposed rule. See R-14 below.</p>
<p><b>R-6. Make it easier for owners to call a meeting.</b> The Act, at RCW 64.38.035(1), should be amended to provide that owners having 5% of the votes in the association can trigger the calling of a special meeting of the membership.</p>	<p>The Committee recommends the threshold that owners must satisfy in order to trigger the association's obligation to call a special meeting of owners be lowered from 10% to 5% of the total votes in the association. By lowering the threshold, it will make it easier for owners who have an issue with an action of the board to cause a meeting of the membership to be called. Lowering this threshold does not impact the percentage of votes needed to establish a quorum or to conduct certain items of business such as the election or removal of directors, or the amendment of the governing documents.</p>
<p><b>R-7. Make it easier for owners to conduct business at a membership meeting.</b> The Act, at RCW 64.38.040, should be amended to provide that owners having 25% of the votes in the association can constitute a quorum, thus enabling the owners to conduct general business at a meeting of the association membership.</p>	<p>The Committee recommends that the quorum threshold that owners must satisfy in order to conduct business at a meeting of the association membership be lowered from 34% to 25%, thus preventing general owner apathy from frustrating the association's ability to hold association meetings and elections. Lowering the quorum requirement does not affect the percentage of votes needed to conduct certain items of business such as the amendment of the governing documents.</p>
<p><b>R-8. Allow for incorporation.</b> The Act should be amended to authorize a board to incorporate an association.</p>	<p>Although incorporation confers benefits on members, unlike the condominium act, the Act does not require associations to be incorporated. To eliminate any doubt about a board's authority, the Committee recommends that the Act specifically authorize the board to incorporate an association.</p>

Recommendations:	Comments:
<p><b>R-9: Set a time limit on challenging a change to the declaration.</b> The Act should be amended to provide that an action challenging the validity of a declaration amendment be brought within one year of the recording of the amendment, (as provided in § 2-117(b) of UCIOA.).</p>	<p>Association members' need to be able to change their declaration to better meet their needs is dealt with below. But changing a declaration for the better is of limited utility if the validity of the change is open to challenge for a number of years. Though affording an opportunity to challenge the validity of a change to a declaration is important, the need to afford that opportunity must be balanced against the need for finality. Association members and volunteers need to know that, at some point, the declaration change that the owners approved is now final. In UCIOA and in the Washington Condominium Act, this problem was solved by providing potential challengers with one year within which to bring their challenge to the validity of a change to a declaration. The Committee recommends that the Act be amended to bring it into conformity with that one year standard.</p>
<p><b>R-10. Do not change the budgeting provision of the Act.</b> The Act, at RCW 64.38.025(3), should not be amended to change the existing requirements for ratification of an association's budget.</p>	<p>The Committee did consider requests that it recommend changes to the Act's existing provisions on budget ratification. The Committee decided against recommending a change to the Act's existing budget ratification provision because the existing provision, which conforms to the budget ratification provision in UCIOA and in the Washington Condominium Act, strikes the appropriate balance between an association's need to fund its operations and the membership's need to reject a budget that does not reflect the intentions of most association members. The Committee also decided against making any recommendations for changes to association lien rights for unpaid homeowners dues. Whether and to what extent an association has lien rights is determined in the association's declaration and is left to the discretion of its members.</p>

2. Some Declarations Are Too Hard To Change

Recommendations:	Comments:
<p><b>R-11: Make Changing Existing Declarations Easier.</b> The Act should be amended to create a means by which owners can seek judicial relief from a requirement, in an existing declaration, that 75% or more approve a change to the declaration. Specifically, the Act should be amended to permit 67% of owners affected by such an</p>	<p>Many existing declarations require exceedingly high votes of the homeowners to approve amendments. Many other declarations are simply silent on the process for adopting amendments and thus require unanimous consent. Such provisions frustrate the homeowners' ability to change their declarations to meet current needs. The</p>

<p>existing declaration to seek a court order reducing the approval required to 67% where the court determines that the higher existing approval requirement is an unreasonable burden on the ability of owners to amend their declaration and to administer the property under their jurisdiction.</p>	<p>Committee's recommendation would create a process for asking a judge to declare that older declarations, requiring 75% or 100% approval of any change, can now be amended by only 67% of the total votes. The proposal also streamlines the ways in which homeowners can vote to approve an amendment.</p>
<p><b>R-12: Make Changing Future Declarations Easier.</b> The Act should be amended to provide that declarations subsequently recorded may be amended by 67% approval of the owners, (as provided in §2-117 of the Uniform Common Interest Ownership Act ("UCIOA")).</p>	<p>Unlike condominiums, no statute exists that specifies a minimum or maximum vote requirement for changes to declarations. This leaves developers and their counsel without guidance. As a result, declarations are drafted that (a) do not specify how amendments can be made, or (b) require unanimous consent to adopt amendments. The new statutory provision is intended to provide uniformity in the drafting of declarations and to provide homeowners with the flexibility to periodically change the declaration. The required 67% approval is high enough to make declaration changes difficult, but not impossible, and is based on § 2-117 of UCIOA, which adopts a minimum vote of 67% for covenant changes.</p>

3. Some Bylaws And Rules Are Too Easy To Change.

<p><b>Recommendations:</b></p>	<p><b>Comments:</b></p>
<p><b>R-13: Let owners ratify a board's changes to bylaws.</b> The Act should be amended to provide that, where an association's existing bylaws allow its board to amend the bylaws without owner approval, any future board action to change such bylaws should be subject to a ratification vote by the owners. The Act should further be amended to establish a mandatory ratification process. This mandatory ratification process should include requirements that text of the bylaw change and a notice of meeting be given to owners a set number of days before the owners' meeting at which the ratification vote is to take place.</p>	<p>The bylaws of some associations allow the bylaws to be changed by board action alone. An owner impacted by a change the board made to the association's bylaws has limited recourse. The owner can file suit to challenge the board action or the owner can petition to recall the board and, if successful, help elect a new board that can then make its own changes to the bylaws. Owners expressed to the Committee their concern that boards with the power to amend bylaws might do so in ways that impact owners, without owners having any say in the creation of those changes. The Committee recognized this concern as similar to the concerns that previously led the Legislature to create the budget ratification process contained in the Act. The Committee drew upon that solution to create a bylaws amendment ratification process. Key to both ratification processes is a careful balancing of the need of an association to conduct its business efficiently and the need for impacted owners to have an opportunity to undo a bylaws change that is out of step with the majority of owners in the community.</p>

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<p><b>R-14: Let owners ratify a board's changes to rules.</b> The Act should be amended to require that a rule change not take effect until (1) owners are given notice of the change and an opportunity to comment on the rule and (2) owners are subsequently given notice of the rule's adoption. (An exception is made for an "emergency rule.") Owners should have the right, through a petition of 20% of the total votes in the association within 30 days of the notice of adoption, to request a ratification vote on the rule. The rule becomes effective unless a majority of the total votes in the association act to reject the rule.</p>	<p>Association rules are simultaneously necessary and a source of disputes between associations and their members. The Act and UCOIA give association boards authority to make rules. Some owners expressed concern to the Committee that board-created rules can significantly impact owners and that the Act gives owners no voice in the creation of those rules. The Committee believes that affording owners an opportunity to comment on a proposed rule before a board takes action to adopt the rule will allow a board to make a more informed decision when it acts to adopt the rule. (This "notice and opportunity to comment" requirement is another one on which the Committee has employed the "safe harbor" approach, as the Committee has recommended a "notice and comment" process which, if followed by an association, will establish compliance with the Act's standards regarding validity of a rule.) The Committee also believes that, by creating an opportunity for a group of owners to trigger a ratification vote on the rule a board adopts, owners are provided with a means by which a majority of the membership can reject a rule the community does not want.</p>
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**B. Problems With Applying The Standards**

1. Owners Should Be Given Due Process

Recommendations:	Comments:
<p><b>R-15: Guide Boards on how to provide due process.</b> The Committee recommends adding a new section to the Act to establish an optional "safe harbor" due process procedure. The "safe harbor" procedure (a) specifies contents of the notice an owner must be sent, (b) requires the violation notice be based on first hand knowledge of a person who witnessed the violation, (c) provides the owner a right to timely request a hearing on the violation, (d) requires the association to furnish information to an owner who timely requests a hearing, (e) permits an owner to be represented at the hearing, (f) permits the hearing board to continue the hearing to gather more information and (g) requires the association's decision to be issued in writing within 30 days of the hearing.</p>	<p>The Act currently provides, at RCW 64.38.020(13), that an association can impose a fine, provided that the owner has been given notice and an opportunity to be heard. But disputes arise over procedures associations follow to comply with the Act's requirement that the owner be given "notice and an opportunity to be heard." Some associations, with more resources, have developed their procedures with the help of their lawyers. Other associations, with limited resources, have developed procedures as best they can. The Committee concluded that it should create a procedure an association could use with knowledge that, by using the procedure, the association would be giving the "notice and opportunity to be heard" that the Act requires. This procedure is a "safe harbor" procedure. That means an association can use a different procedure. But if it uses the "safe harbor"</p>

	procedure, it will be deemed to have provided the "notice and opportunity to be heard" required by the Act.
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2. Disputes Should Be Resolved Non-Judicially

Recommendations:	Comments:
<p><b>R-16: Most disputes should be resolved through mediation:</b> The Act should be amended to add a new section requiring mediation of most disputes arising after the new section is added to the Act, with certain claims exempted. The Act should permit associations to follow reasonable mediation processes contained in the association's declaration or adopted by a majority vote of the non-declarant members of the association. If an association has not created its own mediation process, then the Act's mediation procedure must be followed. The Act's mediation process provides for (1) the qualifications and selection of a mediator, (2) the exchange of a "request," a "response," and a "reply" between the parties, (3) the content of, and timing for delivery of, each of those documents, and (4) the allocation of mediation fees and costs among the participants. Finally, the Act should provide that, where a party refuses to participate in mediation, the other party can proceed to court and ask the court to order the party to participate in mediation and, where appropriate, to impose sanctions on the party who refused to participate in mediation.</p>	<p>The Committee identified the need for a means by which disputes between association members, or between an association and its member(s) might be resolved expeditiously and inexpensively through the use of mediation. (The Committee considered mandatory binding arbitration as a possible method for resolving disputes but ultimately decided to recommend against creating a mandatory binding arbitration requirement. In reaching this decision, the Committee noted that: (1) access to courts, including access to a trial by jury, is considered a fundamental right; (2) disputes and issues which arise in the association context frequently involve requests for injunctive relief and courts, rather than arbitrators, are better equipped to deal with requests for injunctions and other equitable relief; (3) the perceived benefit of a less expensive resolution may be illusory as arbitration is an expensive process; and (4) the perceived benefit of finality may also be illusory as arbitration decisions are frequently appealed.) The Committee again used a version of the "safe harbor" approach, allowing associations flexibility to create their own mediation processes, provided they created their own process using one of two acceptable methods, and establishing a process that is mandatory for those associations that elected not to create their own mediation processes. The Committee recognized that, while mediation is well suited to resolving many types of disputes within associations, there are some disputes that do not lend themselves to being effectively and efficiently resolved through the mediation process. Those ill-suited disputes were exempted from the general requirement that disputes be submitted to mediation. And, recognizing that even mandatory mediation is "voluntary" in the sense that, for a mediation to produce a resolution, the parties to the mediation must participate in the mediation process. Where a person declines to take part in the mediation process, the Committee has provided the court with authority to take appropriate action,</p>



	including that of ordering the party to participate in mediation, or in an appropriate case, to impose sanctions on the party who refused to participate in the mediation process.
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**C. Problems Born of The Uninformed Buyer**

1. A Buyer Should Be Told What Being An Association Member Generally Means

Recommendations	Comments:
<p><b>R-17. Give buyers a "Notice to Buyers."</b>  Subject to the exclusions set forth below, any purchase and sale agreement for residential real property in which the owner is a member of a homeowners' association as defined in RCW 64.38.010(1) shall include a Notice to Buyer. The Notice advises buyers that they are purchasing a home in a homeowners association and that, among other things, the association may collect dues and regulate the use of property within the association. (See <i>Exhibit A for the full content of the Notice to Buyer</i>). This Notice to Buyer is not required in transactions which are (i) between commercial buyers and sellers or (ii) excluded from the requirement for a disclosure statement pursuant to RCW 64.06.010.</p>	<p>Buyers who have not previously owned a home located within a homeowners' association often do not understand what buying into an association actually means. This general lack of awareness can cause later disputes when new owners are asked to fulfill obligations they were not aware they, by buying a home within an association, had undertaken. One way to alert buyers that, by buying a particular home, they will become a member of an association, is to explicitly state that in the purchase and sale agreement the buyer enters into. The Committee has drafted language for a Notice to Buyer and recommends that the Act be amended to require use of the Notice to Buyer in purchase and sale agreements for homes within associations.</p>
<p><b>R-18. Give buyers a FAQ pamphlet.</b> RCW 64.06.020 (and other sections as necessary) should be changed to require the distribution of a buyer information pamphlet ("Frequently Asked Questions") along with the disclosure form required by RCW 64.06.020 for the sale of any residential real property in which the seller is a member of a homeowners' association as defined in RCW 64.38.010(1). (See <i>Exhibit B – Frequently Asked Questions.</i>)</p>	<p>In addition to alerting a buyer to the fact that, by buying a particular home, the buyer will become an association member, there is a need to inform the buyer, in general terms, what being an association member most likely will entail. The Committee has prepared an easy to understand series of questions and answers designed to impart a general understanding of the nature of association membership. The Committee recommends the Act be amended to require the distribution of this pamphlet to buyers who are buying a home within an association.</p>

2. A Buyer Should Know Enough About This Association To Make An Informed Decision

Recommendations:	Comments:
<p><b>R-19. Give buyers a resale certificate.</b>  Unless waived in writing by the buyer, a resale certificate and mandatory disclosures shall be required for all transfers of residential real estate subject to the Act other than those</p>	<p>Buyers who generally understand what buying into an association means may not understand what buying into a particular homeowners' association means. The Act does not currently require an association or a seller to provide a</p>

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<p>listed in RCW 64.06.010 (part of the Form 17 requirements).</p>	<p>buyer with a resale certificate containing important documents and financial information from which a buyer could make a more informed decision about becoming a member of a particular homeowners' association. The Committee recommends that the Act require a resale certificate to be provided to a buyer unless the buyer waives the right to receive the certificate.</p>
<p><b>R-20. Amend RCW 64.06 to implement this.</b> RCW 64.06 should be amended to require delivery of the resale certificate form and exhibits mandated in ch. 64.38 and be amended as otherwise necessary to implement the disclosure provisions of ch. 64.38.</p>	<p>RCW 64.06 requires disclosure of certain information to a buyer so that the buyer's decision to purchase residential property is an informed decision. Amending the Act to require disclosures, as the Committee recommends, means that RCW 64.06 should also be amended so the established disclosure process is updated to include these association related disclosures.</p>

**D. Problems Best Solved By Other Means**

<p><b>Recommendations:</b></p>	<p><b>Comments:</b></p>
<p><b>R-21: Investigate the feasibility of creating an ombudsman.</b> The Committee recommends that the Legislature establish a study committee to determine whether an ombudsman program is needed to provide associations and their members with a resource for addressing problems that legislation, litigation or mediation are not well suited to address and, if it determines such a program is needed, then to make recommendations about how the Legislature create such a program.</p>	<p>Numerous participants in the Committee's public-input process stated that association members would benefit from an ombudsman program that could serve as a resource that could receive member complaints and, where appropriate, assist in addressing the complaint.</p>
<p><b>R-22: Treat these recommendations as an interwoven whole.</b> These recommendations listed above and embodied in the attached restated version of the Act are, in the Committee's view, an interwoven set of recommendations. For example, certain recommendations particularly favorable to owners are made by the Committee because other recommendations that favor an association are also made, with each recommendation serving as a counter-balance to the other. Likewise, numerous requests were made by owners and by associations to make additional recommendations. The absence of a recommendation above that advances a "solution" dear to the heart of this group or that is the product of the Committee's consideration of, but rejection of, the proffered</p>	

<p>"solution." The Committee feels compelled to make this statement in anticipation of well-intentioned requests by interest groups that this change or that be added to list of recommended changes to address some problem "the Committee overlooked."</p>	
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### III. DRAFT PROPOSED STATUTORY LANGUAGE

To implement its recommendations, the Committee further recommends that the Homeowners Association Act be revised as follows:

#### **RCW 64.38.005 Intent**

The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. Unless otherwise provided in this chapter, this chapter applies to all homeowners associations in the state.<sup>1</sup>

#### **NEW SECTION: Obligation of Good Faith**

(1) Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.<sup>2</sup>

(2) This section sets forth a basic principle running throughout this Chapter: in all transactions involving declarants, associations, and their members, good faith is required in the performance and enforcement of all contracts and duties. Good faith, as used in this Chapter, means observance of honesty in fact and reasonable standards of fair dealing and is used in the same manner as Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.<sup>3</sup>

#### **RCW 64.38.010 Definitions**

For purposes of this chapter:

(1) "Assessment" means all sums chargeable by the association against a lot including, without limitation: (a) regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account. [Applicability: This definition and statutory change is effective immediately, would apply to all homeowners associations and would supersede any inconsistent provisions in the association's governing documents.]<sup>4</sup>

(2) "Association" or "homeowners' association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and, by virtue of membership, the owner is obligated to pay assessments pursuant to the governing documents. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

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<sup>1</sup> Decided 5/7/07.

<sup>2</sup> Decided 1/8/07.

<sup>3</sup> Decided 8/20/07.

<sup>4</sup> Decided 5/7/07 and 6/4/07.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Community" means residential real property which is subject to a declaration pursuant to which an association is established for governance of the community.

(7) "Cooperative" means a community in which the residential real property is owned by an association, each of whose members is entitled by virtue of its ownership interest in the association to exclusive possession of a portion of such property.

(8) "Declarant" means any person who executes as declarant a declaration as defined herein or who succeeds to the rights of a declarant pursuant to an instrument recorded in the real property records of every county in which any portion of the community located.

(9) "Declaration" means the declaration of covenants, conditions, and restrictions or any other document, however denominated, that is recorded in every county in which any portion of the community is located and that provides for the establishment of an association to govern the community. In the case of cooperative, declaration shall mean the document or documents, however denominated, that create the cooperative housing association that owns the residential real property comprising the cooperative, whether or not recorded.

(10) "Governing documents" means the declaration, articles of incorporation, bylaws, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(11) "Lot" means a physical portion of a community designated for separate ownership or occupancy and designated for residential use, the boundaries of which are described in the real property records of every county in which any portion of the community is located. Within a cooperative, a lot shall mean that portion of the community designated for exclusive possession by a member of the cooperative's association. Lot does not mean an apartment created under chapter 64.32 RCW or a unit created under chapter 64.34 RCW.

(12) "Owner" means a declarant or other person who owns a lot but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" means the vendee, not the vendor of a lot under a real estate contract.

(13) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(14) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

#### **RCW 64.38.015 Association Membership**

The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped or, in the case of a cooperative, the members of the association who by virtue of their ownership interest in the association have exclusive possession of a lot.

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**RCW 64.38.020 Association powers**

Unless otherwise provided in the declaration, an association may:

(1) Adopt and amend bylaws, resolutions, policies, rules, and regulations not inconsistent with the declaration or with this chapter;

(2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(7) Cause additional improvements to be made as a part of the common areas;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments;

(12) Take enforcement action with respect to any violation of the governing documents;<sup>5</sup>

(13) After notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the governing documents, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the governing documents;<sup>6</sup>

(14) Exercise any other powers conferred by the declaration, articles or bylaws;<sup>7</sup>

(15) Exercise all other powers that may be exercised in this state by the same type of legal entity as the association; and

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

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<sup>5</sup> Decided 7/23/07.

<sup>6</sup> Decided 7/23/07.

<sup>7</sup> Decided 7/23/07.

**RCW 64.38.025 Board of directors--Standard of care--Restrictions**

(1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers of the association and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.<sup>8</sup>

**NEW SECTION: Board Authorized to Incorporate Association**

A board of directors may by majority vote incorporate an unincorporated homeowners association as a non-profit corporation.<sup>9</sup>

**NEW SECTION: Removal of directors.**

Any member of the board of directors may be removed with or without cause by a vote of a majority of the votes of the owners entitled to elect such board member and present, in person or by proxy, and entitled to vote at any regular or special meeting of the owners at which a quorum is present.<sup>10</sup>

**RCW 64.38.030 Association bylaws**

Unless otherwise provided for in the declaration, the bylaws of the association shall contain provisions not inconsistent with this chapter which provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers of the association and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers of the association may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Any other matters the association deems necessary and appropriate.

**NEW SECTION: Resale Certificate Disclosures**

(1) Unless waived in writing by the buyer, a resale certificate and mandatory disclosures as set forth below are required for all transfers of residential real estate subject to the Act other than those listed in RCW 64.06.010 (*part of the Form 17 requirements*).

<sup>8</sup> Recommend that (4), dealing with the removal of directors, be set forth in a separate statute.

<sup>9</sup> Decided 3/29/07.

<sup>10</sup> Decided 7/9/07.

(2) In a transaction for the sale of a lot, the seller shall, unless the buyer has expressly waived the right to receive a resale certificate, and except for those transfers listed in RCW 64.06.010, furnish to the buyer before execution of any contract for sale of the lot, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement setting forth the amount of the annual assessment due from the selling lot owner, and any unpaid assessment currently due and payable from the selling owner and a statement of any special assessments that have been levied against the lot which have not been paid even though not yet due;

(b) A statement, which shall be current to within forty-five days, of whether the sum of assessments which are delinquent, under the association's reasonable delinquency policy, exceeds ten percent of the association's annual budgeted revenue and, if so, the total number of lots which are delinquent under such delinquency policy.

(c) A statement, which shall be current to within forty-five days, of whether any obligation or liability of the association in excess of the lesser of ten thousand dollars or five percent of the association's budgeted annual expenditures is sixty or more days past due and, if so, the circumstances that account for such delinquency.

(d) A statement of any anticipated repair or replacement cost in excess of five percent of the association's budgeted annual expenditures which repair or replacement cost has been approved by the board of directors;

(e) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(f) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(g) A balance sheet and a revenue and expense statement of the association, which shall be current to within one hundred twenty days;

(h) The current ratified budget of the association;

(i) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(j) A statement describing any insurance coverage maintained by the association

(k) A statement as to whether there are any alterations or improvements to the lot being sold by the owner that the association has determined violate any provision of the governing documents;

(l) A statement of the number of lots, if any, still owned by the declarant, whether the declarant has transferred control of the association to the owners, and the date of such transfer;

(m) A statement as to whether there are any known and currently existing violations of the health or building codes with respect to the lot or improvements thereon or any portions of the common areas and or improvements thereon located on common areas;

(n) A copy of the governing documents (including, e.g. , the recorded plat maps and declaration of covenants or easements, the articles of incorporation, if any, bylaws, rules and regulations, including architectural and construction standards and guidelines and the association's current fine schedule), minutes of the most recent meeting of the members of the association, minutes of the previous six meetings of the board of directors, *provided* that minutes of board meetings that occurred more than three years before the date of the resale certificate required by this section need not be provided, and any other information reasonably requested by mortgagees of prospective purchasers. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association. The association may charge a fee for photocopying costs not to exceed fifteen cents per page for providing copies of governing documents. The duty to provide copies of documents that are recorded in the county in which the lot is located will be deemed satisfied if the association identifies in the resale certificate a link to a website through which a copy of the recorded document can be obtained. The duty to provide copies of the governing documents will be deemed satisfied if the association provides the documents via electronic transmission to the email address provided by the owner who requests issuance of a resale certificate.

(3) The association, within ten days after a request by an owner, and subject to payment of a reasonable fee not to exceed one hundred fifty dollars, shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the owner to comply with this section. The association may charge an owner a nominal fee for updating a resale certificate within six months of the owner's request. The owner shall also sign the certificate but the owner is not liable to the buyer for any erroneous information provided by the association and included in the certificate unless and to the extent the owner had actual knowledge thereof.

(4) The dollar amounts stated above can be adjusted for inflation based on the Consumer Price Index.

**NEW SECTION: Notice to Buyer**

Subject to the exclusions set forth below, any purchase and sale agreement for residential real property in which the owner is a member of a homeowners' association shall include the following notice:

BY PURCHASING THE RESIDENTIAL PROPERTY WHICH IS THE SUBJECT OF THIS AGREEMENT, YOU WILL BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION WHICH GOVERNS THE COMMUNITY IN WHICH THE PROPERTY IS LOCATED. SUCH ASSOCIATIONS MAY MAINTAIN AND REPAIR COMMON AREAS, RESTRICT USE OF YOUR PROPERTY, COLLECT DUES, AND APPROVE OR DISAPPROVE BUILDING PLANS. UNLESS YOU WAIVE YOUR RIGHT IN WRITING, YOU ARE ENTITLED TO RECEIVE FROM THE SELLER AS PART OF THE DISCLOSURE STATEMENT REQUIRED BY RCW CHAPTER 64.06 A CERTIFICATE SIGNED BY AN OFFICER OR AUTHORIZED AGENT OF THE HOMEOWNERS' ASSOCIATION PROVIDING CERTAIN FINANCIAL AND OTHER DISCLOSURES ABOUT THE ASSOCIATION. IMPORTANT INFORMATION REGARDING THE PURCHASE OF A HOME WHICH IS

SUBJECT TO MEMBERSHIP IN A HOMEOWNERS ASSOCIATION IS  
AVAILABLE AT WWW.XYZ.GOV.<sup>11</sup>

The foregoing notice is not required in transactions which are (i) between commercial buyers and sellers or (ii) excluded from the requirement for a disclosure statement pursuant to RCW 64.06.010.

**NEW SECTION: Association Budgets and Assessments.**

(1) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than ten<sup>12</sup> nor more than sixty days after mailing of the summary. Unless at that meeting the proposed budget is rejected, in person or by proxy, by a vote of a majority of all the votes in the association, or any larger percentage specified in the governing documents, the proposed budget is ratified and approved, whether or not a quorum is present at the meeting. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(2) To the extent authorized in the declaration, an association's lien rights may include liens to secure payment of fines validly imposed.<sup>13</sup>

(3) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the amount of the assessments sought to be recovered becomes due.<sup>14</sup>

(3) This section shall be construed to apply retroactively to any governing documents in effect on the effective date of this section and shall supersede any provisions of the governing documents that are inconsistent with this section. All such inconsistent provisions of the governing documents shall be void and unenforceable.

**RCW 44.38.033 Flag of the United States--Outdoor display--Governing Documents**

(1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint,

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<sup>11</sup> The Committee recommends that a website be established, perhaps by the Consumer Protection Division of the Office of the Attorney General to provide additional information concerning homeowners associations.

<sup>12</sup> Decided 7/9/07.

<sup>13</sup> Decided 6/4/07.

<sup>14</sup> Decided 6/4/07.

roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable.

**RCW 64.38.034 Political yard signs--Governing documents**

(1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable.

**RCW 64.38.035 Association meetings--Notice**

(1) A meeting of the association must be held at least once each year.

(2) Notwithstanding any applicable statute or provision in the governing documents to the contrary, a special meeting of the association may be called by the president, a majority of the board of directors, or by owners having five percent of the votes in the association. This section supersedes any inconsistent provisions of the governing documents or applicable statute.<sup>15</sup>

(3) Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

**NEW SECTION: Board of Directors Meetings.**<sup>16</sup>

Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably

<sup>15</sup> Decided 7/9/07.

<sup>16</sup> This is the existing text of 64.38.035(2), but for ease of reference and use, it has been broken out into a separate section.

identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

**RCW 64.38.040 Quorum for meetings of association members**

Unless the governing documents specify a smaller percentage, a quorum is present throughout any meeting of the association if the owners to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.<sup>17</sup>

**RCW 64.38.045 Financial and other records--Property of association--Copies--Examination--Annual financial statement--Accounts**

(1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a

reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds.

**NEW SECTION: Action to Reduce Voting Requirement for Amendment of Declaration**

(1) This section applies to declarations recorded prior to [the effective date of the new Act].

(2) If a declaration requires more than seventy-five percent of the votes in the association to approve any amendment to the declaration, the homeowners association shall, if so directed by owners holding not less than sixty-seven percent of the votes in the association,

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<sup>17</sup> Decided 7/9/07.

bring an action in the superior court for the county in which any portion of the real property subject to the declaration is located to have the percentage of votes required to amend the declaration reduced. The owners' decision to bring such an action may, notwithstanding anything to the contrary in the declaration, be made by votes cast at a meeting duly called, or by written consent, or by any combination thereof. The action shall be an *in rem* declaratory judgment action whose title shall be the description of the property subject to the declaration.

(3) If the court finds that the percentage of votes set forth in the declaration is an unreasonable burden on the ability of the owners to amend the declaration and of the association to administer the property under its jurisdiction, the court shall enter an order striking such percentage of votes from the declaration and substituting in lieu thereof the percentage of votes which the court determines to be appropriate in the circumstances. In no event shall the court mandate approval of less than sixty-seven percent of the votes in the association to amend any provision of the declaration.

**NEW SECTION: Amendment of Declarations Recorded After [the effective date of this section]**

(1) Declarations recorded after the effective date of the statute<sup>18</sup> can be amended with the approval of sixty-seven percent of the total votes in the association, or any larger percentage specified in the declaration.<sup>19</sup>

(2) Notwithstanding the foregoing provision, to the extent provided in the declaration, the declarant may, to the extent provided in the declaration, unilaterally amend the declaration but only if such amendment is for one of the following purposes: (a) subjecting additional property to the declaration pursuant to a plan of expansion set forth therein, (b) withdrawing property from the declaration if the withdrawal is allowed under the terms of the declaration and if the property to be withdrawn is not owned by any third party, (c) bringing any provision of the declaration into compliance with any applicable governmental statute, rule, regulation or judicial determination, (d) enabling any title insurance company to issue title insurance coverage for the lots, (e) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, to make, purchase, insure or guarantee mortgage loans for the lots, or (f) satisfying the requirements of any local, state or federal governmental agency. However, no such amendment shall adversely affect the title to any lot unless the owner thereof consents to it in writing.

(3) The declaration may require all or a specified number or percentage of the eligible mortgagees who hold first lien security interests encumbering lots to approve specified actions of the owners or association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (a) deny or delegate control of the general administrative affairs of the association by the owners or the board of directors or (b) prevent the association or the board of directors from commencing, intervening in or settling any litigation or proceeding or (c) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds. For purposes of this provision, an eligible mortgagee shall mean the holder of a mortgage on a lot that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees, which request shall include the lot number and address of the property subject to the mortgage.

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<sup>18</sup> This provision is intended to operate prospectively, and to apply only to covenants recorded after the effective date of the statutory change.

<sup>19</sup> The Committee considered the concept of establishing different voting requirements for different categories of amendments. The Committee rejected the concept due to the difficulty of adequately describing categories of amendments and the desire to avoid creating additional ambiguity and uncertainty.

Notwithstanding anything to the contrary herein, if an eligible mortgagee fails to respond to a request for approval as provided herein within thirty days following the association's issuance of a notice requesting such approval, the eligible mortgagee's approval shall be deemed to have been granted.

(4) The declaration may permit the associations members to approve an amendment through a combination of votes conducted during meetings or through a written consent process.<sup>20</sup>

(5) The declaration may require that all declaration amendments must be (a) signed by an officer of the association or, if applicable, by the declarant, (b) acknowledged, and (c) recorded in the records of each county in which any portion of the property is located to be effective.

**NEW SECTION: Challenges to Validity of Covenant Amendments.**

(1) No action to challenge the validity of a declaration amendment adopted by the association pursuant to this chapter may be brought more than one year after the amendment is recorded.

(2) This section applies to amendments adopted after the effective date of this section.<sup>21</sup>

**NEW SECTION: Member Approval of Bylaws Adopted or Amended by the Board**

(1) This section applies to associations in which the declaration or the bylaws authorize only the board of directors to adopt, amend or rescind bylaws and to do so without a vote of the members, and with respect to those associations, to all bylaws adopted or amended by the board of directors after the effective date of this section.

(2) No bylaw adopted, amended or rescinded by the board of directors shall be valid or enforceable until it is ratified by the association's members as set forth below:

(a) The board of directors shall submit all bylaws adopted, amended or rescinded by the board to a vote of the members. The vote must be held at the next regularly scheduled annual meeting of the association, or at a special meeting held before the next annual meeting.

(b) The notice of the annual or special meeting must include the text of any existing bylaw which the board has approved for amendment or rescission and the text of any new or amended bylaw approved by the board.

(c) Unless the governing documents specify a longer advance notice period for a meeting, notice of the meeting at which the proposed bylaw change will be voted upon must be given not less than fourteen days in advance of the meeting and shall not be given more than sixty days in advance of the meeting.

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<sup>20</sup> The Committee considered and rejected the concept of permitting homeowners to approve covenant amendment approvals via electronic mail. Because covenants contain restrictions affecting homeowners' abilities to use their properties and must be recorded, and there are still too many technical issues with voting by email, it was felt that the process for adopting amendments should be more formal and that owner approvals should be given in a manner that permits easier verification.

<sup>21</sup> Decided 8/6/07.

(d) The proposed bylaw change will be deemed approved and ratified by the members unless a majority of all the votes in the association vote at the meeting, in person or by proxy, to reject the bylaw change approved by the board.

(3) All bylaw changes ratified by the members in accordance with this section will take effect on the day after the annual or special meeting at which they were ratified.

**NEW SECTION: Association Rule-Making - Member Approval of Rules**

(1) This section applies to rules and policies, or amendments thereto, that are adopted after the effective date of this section.

(2) A rule adopted by the board is valid and enforceable if all the following requirements are satisfied: (a) the rule is in writing; (b) the rule is required by law or within the authority of the board conferred by law or by the declaration; (c) the rule is consistent with the governing documents; and (d) the rule is adopted or amended in substantial compliance with the requirements of this chapter. For purposes of this section, a rule shall include any new rule or policy, or an amendment to an existing rule or policy.

(3) Except for emergency rules, the board of directors must provide the association's members with notice and an opportunity to comment on any proposed new or amended rule before the board is authorized to adopt or enforce that rule. For purposes of this section, an "emergency rule" is one that is necessary for the immediate preservation of health and safety. Emergency rules become effective immediately, subject to the members' right to request a ratification vote pursuant to subsection (4) below.

(4) With the exception of emergency rules, rules adopted by the board of directors following notice and an opportunity for comment become effective thirty days after notice of the rules is given to the members in the manner authorized by the governing documents unless a written petition signed by twenty percent of the total votes in the association is submitted to the board within that thirty-day period requesting a ratification vote on the proposed rule. If a ratification vote is requested, the association shall use the following process for the ratification vote:

(a) The board of directors shall submit the rules on which a ratification vote has been requested to a vote of the members, which vote must be conducted at the next regularly scheduled annual meeting of the association, or at a special meeting held before the next annual meeting.

(b) The notice of the meeting at which the ratification vote will be conducted meeting must include the text of the proposed rules.

(c) Unless the governing documents specify a longer advance notice period for an association meeting, notice of the meeting at which the ratification vote will be conducted must be given not less than days in advance of the meeting and shall not be given more than sixty days in advance of the meeting.

(d) The proposed rule change will be deemed approved and ratified by the members unless a majority of all the votes in the association vote at the meeting, in person or by proxy, to reject the rule change approved by the board.

(e) All rule changes ratified by the members in accordance with this section will take effect on the original effective date or such later effective date established by the board.<sup>22</sup>

(5) The board is not required to use the following optional rulemaking process. However, use of this process establishes compliance with the requirements of RCW 64.38.\_\_\_\_(2) above. For purposes of this section, "rule change" means the adoption or amendment of a rule by the board.

(a) The board shall give notice of a proposed rule change to the owners. The notice shall include all of the following information: (i) the text of the proposed rule change; (ii) a description of the purpose and effect of the proposed rule change; and (iii) the deadline for submission of a comment on the proposed rule change.

(b) For a period of not less than thirty days following actual or constructive delivery of a notice of a proposed rule change, the board shall accept written comments from owners on the proposed rule change.

(c) The board shall consider any comments it receives and shall make a decision on a proposed rule change at a board meeting. With the exception of emergency rules, a decision on a rule shall not be made until after the comment submission deadline.

(d) The board shall give notice of a rule change to the owners. The notice shall set out the text of the rule change and state the date the rule change takes effect. With the exception of emergency rules, the date the rule change takes effect shall not be less than thirty days after notice of the rule change is given in the manner authorized in the governing documents.

**NEW SECTION: Enforcement of Governing Documents** (NOTE: This Section is not yet in statutory language form.)

(A) This section establishes procedures which, if followed by an association in the enforcement of its governing documents, will be deemed to have provided the notice and opportunity to be heard that is required by RCW 64.38.020(13). These enforcement procedures are not mandatory and this proposal is not intended to require an association to change its existing enforcement procedures. These procedures are as follows:

- A. The association must provide the owner with a notice of violation that contains the following information:
- A reference to the rules that are alleged to have been violated
  - A short statement of the evidence of the rule violation
  - The name of a person with first hand knowledge of the facts that support the determination that a violation took place
  - A short statement of the remedy being sought, including the amount of any fine being imposed, subject to the owner's right to request a hearing
  - A statement that, if the person cited desires to contest or explain the violation, the person must, within fifteen days of delivery of the notice of violation, submit to the association a written request for a hearing
  - The owner's procedural rights (e.g., right to request a hearing, right to attend the hearing, right to be represented, right to review the evidence supporting the alleged violation)

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<sup>22</sup> Decided 8/20/07.

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- B. The violation notice must be based on the first hand knowledge of a person who witnessed the facts establishing the violation and the violation notice must specifically identify such person by name in the notice . (The intent is to eliminate fines based on anonymous complaints. The identity of a person who advises a board member or manager of a violation can be withheld, but no complaint can be pursued and no fine can be issued unless someone with first hand knowledge of the violation is identified by name in the notice of violation.)
- C. If an owner timely requests a hearing, the association shall set the hearing for a date no sooner than thirty days, and no later than sixty days, from its receipt of the request. The association shall notify the owner of the hearing date not less than twenty days prior to the hearing and shall include in such notification a copy of the association's rules of procedure for conducting its hearing. If an owner does not timely request a hearing, the fine imposed in the notice of violation stands.
- D. Upon timely request by the owner who has requested a hearing, the association must, no later than ten days before the date of the hearing, either provide the owner a copy of all its evidence concerning the alleged violation, including copies of the complaint signed by a witness with first hand knowledge, or identify a time and place at which the owner may inspect such evidence.
- E. The owner has the right to be represented at the hearing.
- F. The chair of the hearing may adjourn or continue the hearing if doing so is necessary to gather additional information that the association needs in order to make a decision.
- G. The association must provide the owner with a written decision, which includes a statement of the reasons for the decision, within thirty days after the hearing.

The notice provision contained in the governing documents of the association shall govern with respect to the calculation of dates and the delivery of any notice or other document required or permitted to be given.

**NEW SECTION: Alternative Dispute Resolution – Mediation**

(1) This section applies to disputes that arise after the effective date of this section and does not apply to any judicial or other legal proceedings pending prior to the effective date of this section.<sup>23</sup>

(2) With the exception of the claims listed below, claims between owners or between owners and their association which involve the governing documents must be submitted to mediation before any party may pursue the claim through court proceedings.

(3) The following categories of claims are exempted from this pre-litigation mediation requirement:

- (a) Claims in which the statute of limitations will soon expire, except that any party to the lawsuit can file a motion with the court requesting that the judge order the parties to mediate before allowing them to proceed with the lawsuit and temporarily staying the litigation proceedings pending the outcome of mediation.

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<sup>23</sup> Decided 8/6/07.

- (b) Claims for injunctive relief, except that any party to the lawsuit can file a motion with the court requesting that the judge order the parties to mediate before allowing them to proceed with the lawsuit and temporarily staying the litigation proceedings pending the outcome of mediation.
- (c) Claims for declaratory judgment.<sup>24</sup>
- (d) Assessment collection and foreclosure claims.
- (e) Claims for defects in construction of homes and other improvements, whether individually owned or part of the common areas.<sup>25</sup>
- (f) Claims that involve parties who are not subject to the covenants – i.e., claims that involve parties who are not either the association or members of the association.
- (g) Claims between members of the association where the claims are not related to the governing documents.
- (h) Claims or issues that have been the subject of a previous mediation Request, Response or mediation conference pursuant to [this statutory provision] within the earlier of twelve months of the date of the most recent Request, Response, or mediation conference.

(3) Unless another reasonable alternative dispute resolution process is set forth in the declaration or adopted by a majority vote of the non-declarant members of the association, the process set forth below shall govern.

- (a) The party requesting mediation (“Requestor”) must submit a request for mediation (“Request”) to the other parties (“Recipient(s”).
- (b) The request can be made in any form (writing, email, fax, etc.) provided that the Requestor can prove the request was received by the Recipient.
- (c) If mediation occurs, it shall be conducted by one mediator, unless the parties otherwise agree. The mediator shall be selected as provided below. Unless all parties to the mediation agree otherwise, the mediation conference must held within ninety days of the date the Request is received by all Recipients.
- (d) The Request must state the issues the Requestor wishes to mediate, certify that the Requestor is willing to meet in good faith, and provide full contact information (name, address, phone, fax, email) for the Requestor’s proposed mediator.
- (e) No later than thirty days after the Request is received by all Recipients, the Recipients must respond to the Requestor. The Response can be made in any form (writing, email, fax, etc.) that enables the Recipient to prove that the

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<sup>24</sup> The Committee discussed the concept of allowing any party to ask the court for an order enforcing a mediation requirement for declaratory judgment claims. The concept was rejected because claims for declaratory judgment concerning the governing documents go to the very heart of the parties’ rights and their obligations to one another and should therefore be decided first, and by a judge.

<sup>25</sup> This requirement is intended to exempt disputes between builders and buyers, or builders and the homeowners association, for construction defects. It is not intended to exempt disputes between associations or their members concerning architectural or design revision provisions in the governing documents,

Response was received by the Requestor.

- (f) If the Recipient agrees to mediate, the Response must include a statement of any additional issues the Recipient wishes to mediate, a statement whether the mediator proposed by the Requestor is acceptable to the Recipient and, if not, contact information for an alternate mediator proposed by the Requestor. If the Recipient does not agree to mediate, the Response must so indicate and must include a statement of the reasons that the Recipient declines to mediate.
- (g) The Requestor must reply (the "Reply") to the Response within fifteen days of receiving the Response. If the Response identifies additional issues the Recipient wishes to address at mediation, the Reply must state whether the Requestor agrees to mediate those issues. If the Requestor does not agree to mediate those issues, the Reply must so indicate and must include a statement of the reasons that the Requestor declines to mediate the issues identified by the Recipient. The Requestor's refusal to mediate the issues identified in the Reply is subject to the provisions of Section 4 below.
- (h) If the Recipient has proposed an alternative mediator, the Reply must state whether the alternate mediator is acceptable to the Requestor. If not, the Requestor must contact the two proposed mediators within fifteen days of delivering the Reply to ask them to choose a third person who is available within the timeframe required [by this section of the statute] to act as mediator.
- (i) The mediator may, but need not be, an attorney or judge. The mediator's primary function is to assist the parties in communicating with one another and to find ways to resolve the disputed issues by agreement.

(4) Although the intent of this section is to encourage mediation before either party may litigate, it is recognized that there are legitimate reasons for one party or the other to decline mediation. For that reason, either the Recipient or the Requestor can decline mediation. If mediation is declined, or a party fails to participate in a scheduled mediation conference, the other party may proceed with filing a legal action. That party may ask the court, and the court is authorized to:

- (a) Enter an order compelling the parties to participate in a mediation conference if the Court determines that mediation would be productive or useful, and
- (b) Impose appropriate remedies for a party's unjustified failure to mediate claims subject to mandatory mediation requirements imposed [under this section] including, without limitation, requiring that party to pay all mediation fees and costs charged by the mediator, reimburse the plaintiff for the costs of filing suit, reimburse the plaintiff for process service costs, and reimburse the plaintiff for some or all of plaintiffs' attorneys fees and costs. This fee and cost shifting authorization is intended to supersede any inconsistent provisions in association governing documents (covenants, articles of incorporation, bylaws, rules or policies).

The standard of review for a trial court's decision pursuant to this section is abuse of discretion.

(5) Unless the parties agree otherwise, the fees and costs of mediation will be shared equally by all parties to the mediation. If the mediator requires pre-payment of all or a portion of the anticipated fees and costs all parties to the mediation must comply with that requirement. The fee and cost provisions of this Section 5 supersede any inconsistent provisions in association governing documents and may not be varied from in the governing documents. No association may condition mediation on a member's payment of any charges, costs or fees.

**NEW SECTION: Notices.**

All notices required under this chapter or the governing documents shall be sent pursuant to the requirements of RCW 64.38.035.<sup>26</sup>

**RCW 64.38.050 Violation--Remedy--Attorneys' fees**

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

**RECOMMENDED CHANGES TO RCW 64.06.020**

**Form 17 Changes:** Change RCW 64.06.020 (and other sections as necessary) to require that the resale certificate form and exhibits mandated in ch. 64.38 be attached to the seller disclosure form required by RCW 64.06.020 (the "Form 17"). Further revise RCW ch. 64.06 to require the delivery of the resale certificate (unless waived by the buyer) in the case of the sale of unimproved Lots that are subject to RCW ch. 64.38 but that otherwise remain exempt from the delivery of a disclosure statement under RCW 64.06. In addition, revise RCW ch. 64.06 to clarify that a delivery of the resale certificate is subject to the provisions of RCW 64.06.030 regarding delivery, RCW 64.06.040 regarding additional information after delivery of the initial disclosure statement, RCW 64.06.050 regarding errors, inaccuracies, or omissions and liability, RCW 64.06.060 regarding consumer protection and RCW 64.06.070 regarding buyers rights and remedies.

Change RCW 64.06.020 (and other sections as necessary) to require the distribution of the attached buyer information pamphlet ("Frequently Asked Questions") along with the disclosure form required by RCW 64.06.020 for the sale of any residential real property in which the seller is a member of a homeowners' association as defined in RCW 64.38.010(1).

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<sup>26</sup> Decided 6/18/07.

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**SENATE BILL 6054**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senators Fraser, Fairley, and Tom

Read first time 02/18/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to homeowners' associations; amending RCW  
2 64.38.005, 64.38.010, 64.38.015, 64.38.020, 64.38.025, 64.38.030,  
3 64.38.035, 64.38.040, and 64.38.050; adding new sections to chapter  
4 64.38 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 64.38.005 and 1995 c 283 s 1 are each amended to read  
7 as follows:

8 The intent of this chapter is to provide consistent laws regarding  
9 the formation and legal administration of homeowners' associations.  
10 Unless otherwise provided in this chapter, this chapter applies to all  
11 homeowners' associations in the state, regardless of when the  
12 declaration was recorded or the association was established.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.38 RCW  
14 to read as follows:

15 An obligation of good faith is imposed in the performance and  
16 enforcement of all contracts and duties governed by this chapter and in  
17 all other transactions involving declarants, associations, and their  
18 members.

1 For purposes of this section, "good faith" means honesty in fact  
2 and the observance of reasonable standards of fair dealing.

3 **Sec. 3.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read  
4 as follows:

5 For purposes of this chapter:

6 (1) "Homeowners' association" or "association" means a corporation,  
7 unincorporated association, or other legal entity, each member of which  
8 is an owner of residential real property located within the  
9 association's jurisdiction, as described in the governing documents,  
10 and by virtue of membership (~~(or ownership of property)~~), the owner is  
11 obligated to pay ((real property taxes, insurance premiums, maintenance  
12 costs, or for improvement of real property other than that which is  
13 owned by the member)) assessments pursuant to the governing documents.  
14 "Homeowners' association" does not mean an association created under  
15 chapter 64.32 or 64.34 RCW.

16 (2) "Governing documents" means the declaration, articles of  
17 incorporation, bylaws, (~~(plat, declaration of covenants, conditions,~~  
18 ~~and restrictions,)~~) rules and regulations of the association, or other  
19 written instrument by which the association has the authority to  
20 exercise any of the powers provided for in this chapter or to manage,  
21 maintain, or otherwise affect the property under its jurisdiction.

22 (3) "Board of directors" or "board" means the body, regardless of  
23 name, with primary authority to manage the affairs of the association.

24 (4) "Common areas" means property owned, or otherwise maintained,  
25 repaired or administered by the association.

26 (5) "Common expense" means the costs incurred by the association to  
27 exercise any of the powers provided for in this chapter.

28 (6) "Residential real property" means any real property, the use of  
29 which is limited by law, covenant or otherwise to primarily residential  
30 or recreational purposes.

31 (7) "Assessment" means all sums chargeable by the association  
32 against a lot including, without limitation:

33 (a) Regular and special assessments for common expenses, charges,  
34 and fines imposed by the association;

35 (b) Interest and late charges on any delinquent account; and

36 (c) Costs of collection, including reasonable attorneys' fees,

1 incurred by the association in connection with the collection of an  
2 owner's delinquent account.

3 This subsection (7) supersedes any inconsistent provision in the  
4 governing documents.

5 (8) "Bylaws" means the code adopted for the regulation or  
6 management of the internal affairs of the association, irrespective of  
7 the designated name of that code. If an association is incorporated  
8 under Title 23 or 24 RCW, "bylaws" means the definition assigned to  
9 "bylaws" in the act pursuant to which the association is incorporated.

10 (9) "Community" means residential real property that is subject to  
11 a declaration under which an association is established for governance  
12 of the community.

13 (10) "Cooperative" means a community in which the residential real  
14 property is owned by an association where each of those members is  
15 entitled, by virtue of his or her ownership interest in the  
16 association, to exclusive possession of a portion of the property.

17 (11) "Declarant" means any person who executes as a declarant a  
18 declaration or succeeds to the rights of a declarant pursuant to an  
19 instrument recorded in the real property records of every county in  
20 which any portion of the community is located.

21 (12) "Declaration" means the declaration of covenants, conditions,  
22 and restrictions or any other document, however denominated, that is  
23 recorded in every county in which any portion of the community is  
24 located and that provides for the establishment of an association to  
25 govern the community. In the case of a cooperative, "declaration"  
26 means the document or documents, however denominated, that create the  
27 cooperative housing association that owns the residential real property  
28 comprising the cooperative, whether or not the document or documents  
29 are recorded.

30 (13) "Lot" means a physical portion of a community designated for  
31 separate ownership or occupancy and designated for residential use, the  
32 boundaries of which are described in the real property records of every  
33 county in which any portion of the community is located. Within a  
34 cooperative, "lot" means that portion of the community designated for  
35 exclusive possession by a member of the cooperative's association.  
36 "Lot" does not mean an apartment created under chapter 64.32 RCW or a  
37 unit created under chapter 64.34 RCW.

1       (14) "Owner" means a declarant or other person who owns a lot, but  
2 does not include a person who has an interest in a lot solely as  
3 security for an obligation. Under a real estate contract, "owner"  
4 means the vendee, not the vendor.

5       (15) "Person" means a natural person, corporation, partnership,  
6 limited partnership, trust, government subdivision or agency, or other  
7 legal entity.

8       (16) "Rules" means the rules, regulations, and policies,  
9 irrespective of their designated name, that are adopted by the members  
10 of the board of an association in accordance with the governing  
11 documents and that supplement, but do not contradict or contravene, the  
12 governing documents.

13       **Sec. 4.** RCW 64.38.015 and 1995 c 283 s 3 are each amended to read  
14 as follows:

15       The membership of an association at all times shall consist  
16 exclusively of the owners of all real property over which the  
17 association has jurisdiction, both developed and undeveloped or, in the  
18 case of a cooperative, the members of the association who by virtue of  
19 their ownership interest in the association have exclusive possession  
20 of a lot.

21       **Sec. 5.** RCW 64.38.020 and 1995 c 283 s 4 are each amended to read  
22 as follows:

23       Unless otherwise provided in the ~~((governing documents))~~  
24 declaration, an association may:

25       (1) Adopt and amend bylaws, resolutions, policies, rules, and  
26 regulations that are not inconsistent with the declaration or with this  
27 chapter;

28       (2) Adopt and amend budgets for revenues, expenditures, and  
29 reserves, and impose and collect assessments for common expenses from  
30 owners;

31       (3) Hire and discharge or contract with managing agents and other  
32 employees, agents, and independent contractors;

33       (4) Institute, defend, or intervene in litigation or administrative  
34 proceedings in its own name on behalf of itself or two or more owners  
35 on matters affecting the homeowners' association, but not on behalf of

1 owners involved in disputes that are not the responsibility of the  
2 association;

3 (5) Make contracts and incur liabilities;

4 (6) Regulate the use, maintenance, repair, replacement, and  
5 modification of common areas;

6 (7) Cause additional improvements to be made as a part of the  
7 common areas;

8 (8) Acquire, hold, encumber, and convey in its own name any right,  
9 title, or interest to real or personal property;

10 (9) Grant easements, leases, licenses, and concessions through or  
11 over the common areas and petition for or consent to the vacation of  
12 streets and alleys;

13 (10) Impose and collect any payments, fees, or charges for the use,  
14 rental, or operation of the common areas;

15 (11) Impose and collect charges for late payments of assessments  
16 (~~and, after notice and an opportunity to be heard by the board of~~  
17 ~~directors or by the representative designated by the board of directors~~  
18 ~~and in accordance with the procedures as provided in the bylaws or~~  
19 ~~rules and regulations adopted by the board of directors, levy~~  
20 ~~reasonable fines in accordance with a previously established schedule~~  
21 ~~adopted by the board of directors and furnished to the owners for~~  
22 ~~violation of the bylaws, rules, and regulations of the association));~~

23 (12) Take enforcement action with respect to any violation of the  
24 governing documents;

25 (13) After notice and an opportunity to be heard by the board of  
26 directors or by the representative designated by the board of  
27 directors, and in accordance with the procedures provided in the  
28 governing documents, levy reasonable fines in accordance with a  
29 previously established schedule adopted by the board of directors and  
30 furnished to the owners for violations of the governing documents;

31 (14) Exercise any other powers conferred by the declaration,  
32 articles, or bylaws;

33 ((+13)) (15) Exercise all other powers that may be exercised in  
34 this state by the same type of ((corporation)) legal entity as the  
35 association, provided those powers do not conflict with any duties  
36 imposed on an association in this chapter; and

37 ((+14)) (16) Exercise any other powers necessary and proper for  
38 the governance and operation of the association.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 64.38 RCW  
2 to read as follows:

3        (1) This section establishes voluntary procedures for the  
4 enforcement of governing documents.

5        (2) A homeowners' association is deemed to have provided notice and  
6 an opportunity to be heard as required under RCW 64.38.020(13) if the  
7 association fulfills the following requirements:

8        (a) The association must provide the owner with a notice of the  
9 violation that contains:

10        (i) A reference to the rule or rules that the owner allegedly  
11 violated;

12        (ii) A short statement of the evidence of the rule violation;

13        (iii) The name of a person with firsthand knowledge of the facts  
14 that support the determination that the violation occurred;

15        (iv) A short statement of the action that the association intends  
16 to take, including the amount of any fine, subject to the owner's right  
17 to request a hearing;

18        (v) A statement that if the owner wishes to contest or explain the  
19 violation, he or she must submit a written request for a hearing to the  
20 association within fifteen days of delivery of the notice of violation;

21        (vi) A statement of the owner's rights to a hearing, to attend the  
22 hearing, to be represented by counsel, and to review the evidence  
23 supporting the alleged violation;

24        (b) Upon the timely request for a hearing from an owner, the  
25 association must set a hearing date no less than thirty and no more  
26 than sixty days from the association's receipt of the request. The  
27 association must notify the owner of the hearing at least twenty days  
28 before the hearing and must include with the notification a copy of the  
29 association's rules of procedure for conducting a hearing;

30        (c) Upon a timely request by the owner who requested a hearing, the  
31 association must, at least ten days before the date of the hearing,  
32 either provide the owner with a copy of all its evidence concerning the  
33 alleged violation, including copies of the complaint signed by a  
34 witness with firsthand knowledge of the facts that support the  
35 determination that the violation occurred, or identify a reasonable  
36 time and place at which the owner may inspect such evidence;

37        (d) The association must permit the owner to be represented by  
38 counsel at the hearing; and

1 (e) The association must provide the owner with a written decision,  
2 including a statement of the reasons for the decision, within thirty  
3 days after the hearing.

4 (3) The chair of the hearing may adjourn or continue the hearing,  
5 if necessary, to gather additional information that the association  
6 needs in order to make a decision.

7 (4) If an owner does not request a hearing within fifteen days of  
8 the association's delivery of the notice of violation, the association  
9 may take the remedial action stated in the notice, including the  
10 imposition of any fine listed in the notice.

11 **Sec. 7.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read  
12 as follows:

13 (1) Except as provided in the association's governing documents or  
14 this chapter, the board of directors shall act in all instances on  
15 behalf of the association. In the performance of their duties, the  
16 officers of the association and members of the board of directors shall  
17 exercise the degree of care and loyalty required of an officer or  
18 director of a corporation organized under chapter 24.03 RCW.

19 (2) The board of directors shall not act on behalf of the  
20 association to amend the articles of incorporation, to take any action  
21 that requires the vote or approval of the owners, to terminate the  
22 association, to elect members of the board of directors, or to  
23 determine the qualifications, powers, and duties, or terms of office of  
24 members of the board of directors; but the board of directors may fill  
25 vacancies in its membership of the unexpired portion of any term.

26 ~~((3) Within thirty days after adoption by the board of directors~~  
27 ~~of any proposed regular or special budget of the association, the board~~  
28 ~~shall set a date for a meeting of the owners to consider ratification~~  
29 ~~of the budget not less than fourteen nor more than sixty days after~~  
30 ~~mailing of the summary. Unless at that meeting the owners of a~~  
31 ~~majority of the votes in the association are allocated or any larger~~  
32 ~~percentage specified in the governing documents reject the budget, in~~  
33 ~~person or by proxy, the budget is ratified, whether or not a quorum is~~  
34 ~~present. In the event the proposed budget is rejected or the required~~  
35 ~~notice is not given, the periodic budget last ratified by the owners~~  
36 ~~shall be continued until such time as the owners ratify a subsequent~~  
37 ~~budget proposed by the board of directors.~~

1       ~~(4) The owners by a majority vote of the voting power in the~~  
2 ~~association present, in person or by proxy, and entitled to vote at any~~  
3 ~~meeting of the owners at which a quorum is present, may remove any~~  
4 ~~member of the board of directors with or without cause.))~~

5       NEW SECTION. Sec. 8. A new section is added to chapter 64.38 RCW  
6 to read as follows:

7       A board of directors may by majority vote incorporate an  
8 unincorporated homeowners' association as a nonprofit corporation.

9       NEW SECTION. Sec. 9. A new section is added to chapter 64.38 RCW  
10 to read as follows:

11       Notwithstanding any inconsistent provision in the governing  
12 documents or other applicable statutes, any member of the board of  
13 directors may be removed with or without cause by a majority vote of  
14 the owners (1) entitled to elect the board member and present, in  
15 person or by proxy, and (2) entitled to vote at any regular or special  
16 meeting of the owners at which a quorum is present.

17       **Sec. 10.** RCW 64.38.030 and 1995 c 283 s 6 are each amended to read  
18 as follows:

19       Unless provided for in the (~~governing documents~~) declaration, the  
20 bylaws of the association (~~shall~~) must contain provisions that are  
21 consistent with this chapter and provide for:

22       (1) The number, qualifications, powers and duties, terms of office,  
23 and manner of electing and removing the board of directors and officers  
24 of the association and filling vacancies;

25       (2) Election by the board of directors of the officers of the  
26 association as the bylaws specify;

27       (3) Which, if any, of its powers the board of directors or officers  
28 of the association may delegate to other persons or to a managing  
29 agent;

30       (4) Which of its officers may prepare, execute, certify, and record  
31 amendments to the governing documents on behalf of the association;

32       (5) The method of amending the bylaws; and

33       (6) (~~Subject to the provisions of the governing documents,~~) Any  
34 other matters the association deems necessary and appropriate.

1           **Sec. 11.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read  
2 as follows:

3           (1) A meeting of the association must be held at least once each  
4 year.

5           (2) Special meetings of the association may be called by the  
6 president, a majority of the board of directors, or by owners having  
7 ((ten)) five percent of the votes in the association and must be held  
8 at a reasonable time and at a reasonable place. Any business may be  
9 placed on the agenda for a special meeting as long as the business does  
10 not conflict with this chapter or the association's governing  
11 documents. If the special meeting is called by the members, the  
12 members may determine the business to be placed on the agenda. The  
13 board may also place business on the special meeting agenda. This  
14 subsection supersedes any inconsistent provisions of the governing  
15 documents or other applicable statute.

16           (3) Not less than ((fourteen)) ten nor more than sixty days in  
17 advance of any meeting, the secretary or other officers specified in  
18 the bylaws shall cause notice to be hand-delivered or sent prepaid by  
19 first-class United States mail to the mailing address of each owner or  
20 to any other mailing address designated in writing by the owner. The  
21 notice of any meeting shall state the time and place of the meeting and  
22 the business to be placed on the agenda by the board of directors for  
23 a vote by the owners, including the general nature of any proposed  
24 amendment to the articles of incorporation, bylaws, any budget or  
25 changes in the previously approved budget that result in a change in  
26 assessment obligation, and any proposal to remove a director.

27           ~~((2) Except as provided in this subsection, all meetings of the~~  
28 ~~board of directors shall be open for observation by all owners of~~  
29 ~~record and their authorized agents. The board of directors shall keep~~  
30 ~~minutes of all actions taken by the board, which shall be available to~~  
31 ~~all owners. Upon the affirmative vote in open meeting to assemble in~~  
32 ~~closed session, the board of directors may convene in closed executive~~  
33 ~~session to consider personnel matters; consult with legal counsel or~~  
34 ~~consider communications with legal counsel; and discuss likely or~~  
35 ~~pending litigation, matters involving possible violations of the~~  
36 ~~governing documents of the association, and matters involving the~~  
37 ~~possible liability of an owner to the association. The motion shall~~  
38 ~~state specifically the purpose for the closed session. Reference to~~

1 ~~the motion and the stated purpose for the closed session shall be~~  
2 ~~included in the minutes. The board of directors shall restrict the~~  
3 ~~consideration of matters during the closed portions of meetings only to~~  
4 ~~those purposes specifically exempted and stated in the motion. No~~  
5 ~~motion, or other action adopted, passed, or agreed to in closed session~~  
6 ~~may become effective unless the board of directors, following the~~  
7 ~~closed session, reconvenes in open meeting and votes in the open~~  
8 ~~meeting on such motion, or other action which is reasonably identified.~~  
9 ~~The requirements of this subsection shall not require the disclosure of~~  
10 ~~information in violation of law or which is otherwise exempt from~~  
11 ~~disclosure.))~~

12 NEW SECTION. **Sec. 12.** A new section is added to chapter 64.38 RCW  
13 to read as follows:

14 Except as provided in this section, all meetings of the board of  
15 directors shall be open for observation by all owners of record and  
16 their authorized agents. The board of directors shall keep minutes of  
17 all actions taken by the board, which must be available to all owners.  
18 Upon the affirmative vote in open meeting to assemble in closed  
19 session, the board of directors may convene in closed executive session  
20 to consider personnel matters; consult with legal counsel or consider  
21 communications with legal counsel; and discuss likely or pending  
22 litigation, matters involving possible violations of the governing  
23 documents of the association, and matters involving the possible  
24 liability of an owner to the association. The motion must state  
25 specifically the purpose for the closed session. Reference to the  
26 motion and the stated purpose for the closed session must be included  
27 in the minutes. The board of directors shall restrict the  
28 consideration of matters during the closed portions of meetings only to  
29 those purposes specifically exempted and stated in the motion. A  
30 motion, or other action adopted, passed, or agreed to in closed session  
31 may not become effective unless the board of directors, following the  
32 closed session, reconvenes in open meeting and votes in the open  
33 meeting on such motion, or other action that is reasonably identified.  
34 This section does not require the disclosure of information in  
35 violation of law or that is otherwise exempt from disclosure. This  
36 section supersedes any conflicting provisions in Title 23 or 24 RCW or  
37 in the association's governing documents.

1           **Sec. 13.** RCW 64.38.040 and 1995 c 283 s 8 are each amended to read  
2 as follows:

3           Unless the governing documents specify a (~~different~~) smaller  
4 percentage, a quorum is present throughout any meeting of the  
5 association if the owners to which (~~thirty-four~~) twenty-five percent  
6 of the votes of the association are allocated are present in person or  
7 by proxy at the beginning of the meeting.

8           NEW SECTION. **Sec. 14.** A new section is added to chapter 64.38 RCW  
9 to read as follows:

10           For declarations that exist before the effective date of this  
11 section:

12           (1) If a declaration requires more than seventy-five percent of the  
13 votes in the association to approve any amendment to the declaration,  
14 the association shall, if so directed by owners holding at least sixty-  
15 seven percent of the votes in the association, bring an action in  
16 superior court for the county, which any portion of the real property  
17 subject to the declaration is located, to reduce the percentage of  
18 votes required to amend the declaration. The owners' decision to bring  
19 an action may, notwithstanding any provision to the contrary in the  
20 declaration, be made by votes cast at a meeting of the association duly  
21 called or by written consent, or by both. The action shall be an in  
22 rem declaratory judgment action whose title shall be the description of  
23 the property subject to the declaration.

24           (2) If the court finds that the percentage of votes set forth in  
25 the declaration is an unreasonable burden on the ability of the owners  
26 to amend the declaration and of the association to administer the  
27 property under its jurisdiction, the court shall enter an order  
28 striking the percentage of votes from the declaration and substituting  
29 the percentage of votes that the court determines to be appropriate in  
30 the circumstances. The court shall not mandate approval of less than  
31 sixty-seven percent of the votes in the association to amend any  
32 provision of the declaration.

33           NEW SECTION. **Sec. 15.** A new section is added to chapter 64.38 RCW  
34 to read as follows:

35           (1) Except as provided in subsection (2) of this section,  
36 declarations recorded after the effective date of this section can be

46

1 amended with the approval of at least sixty-seven percent of the total  
2 votes in the association, or any larger percentage specified in the  
3 declaration.

4 (2) A declarant may unilaterally amend the declaration, but only if  
5 the right to amend is clearly stated in the declaration and if the  
6 amendment:

7 (a) Subjects additional property to the declaration pursuant to a  
8 plan of expansion set forth in the declaration;

9 (b) Withdraws property from the declaration, if the withdrawal is  
10 allowed under the terms of the declaration and if the property to be  
11 withdrawn is not owned by any third party;

12 (c) Brings any provision of the declaration into compliance with  
13 any applicable statute, rule, regulation, or judicial determination;

14 (d) Enables any title insurance company to issue title insurance  
15 coverage for the lots;

16 (e) Enables any institutional or governmental lender, purchaser,  
17 insurer, or guarantor of mortgage loans, to make, purchase, insure, or  
18 guarantee mortgage loans for the lots; or

19 (f) Satisfies the requirements of any local, state, or federal  
20 governmental agency.

21 The amendment shall not adversely affect the title to any lot  
22 unless the owner of the affected lot consents to it in writing.

23 (3) The declaration may require all or a specified number or  
24 percentage of the eligible mortgagees who hold first lien security  
25 interests encumbering lots to approve specified actions of the owners  
26 or association as a condition to the effectiveness of those actions,  
27 but a requirement for approval may not operate to:

28 (a) Deny or delegate control of the general administrative affairs  
29 of the association by the owners or board of directors;

30 (b) Prevent the association or board of directors from commencing,  
31 intervening in, or settling any litigation or proceeding; or

32 (c) Prevent any insurance trustee or the association from receiving  
33 and distributing any insurance proceeds.

34 For purposes of this subsection, "eligible mortgagee" means the  
35 holder of a mortgage on a lot that has filed with the secretary of the  
36 association a written request for copies of notices of any action by  
37 the association that requires the consent of mortgagees that includes  
38 the lot number and address of the property subject to the mortgage. If

1 an eligible mortgagee fails to respond to a request for approval within  
2 thirty days following the association's issuance of a notice requesting  
3 such approval, the eligible mortgagee's approval is deemed granted.

4 (4) The declaration may permit the association's members to approve  
5 an amendment through a combination of votes conducted during meetings  
6 or through a written consent process.

7 (5) The declaration may require that to be effective all  
8 declaration amendments must be signed by one or more officers of the  
9 association, or if applicable, by the declarant. To be effective, all  
10 declaration amendments must be acknowledged and recorded in each county  
11 in which any portion of the property is located.

12 NEW SECTION. **Sec. 16.** A new section is added to chapter 64.38 RCW  
13 to read as follows:

14 An action to challenge the validity of a declaration amendment  
15 adopted by the association under this chapter and after the effective  
16 date of this section may not be brought more than one year after the  
17 amendment is recorded.

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 64.38 RCW  
19 to read as follows:

20 (1) This section applies to associations in which the declaration  
21 or the bylaws authorize only the board of directors to adopt, amend, or  
22 rescind bylaws and to do so without a vote of the members and, with  
23 respect to those associations, to all bylaws adopted or amended by the  
24 board of directors after the effective date of this section.

25 (2) A bylaw adopted, amended, or rescinded by the board of  
26 directors shall not be valid or enforceable until it is ratified by the  
27 association's members as set forth in this subsection:

28 (a) The board of directors shall submit all bylaws adopted,  
29 amended, or rescinded by the board to a vote of the members. The vote  
30 must be held at the next regularly scheduled annual meeting of the  
31 association, or at a special meeting held before the next annual  
32 meeting.

33 (b) The notice of the annual or special meeting must include the  
34 text of any existing bylaw that the board has approved for amendment or  
35 rescission, and the text of any new or amended bylaw approved by the  
36 board.

1 (c) Unless the governing documents specify a longer advance notice  
2 period for a meeting, notice of the meeting, at which the proposed  
3 bylaw change will be voted upon, must be provided at least ten days in  
4 advance of the meeting and shall not be given more than sixty days in  
5 advance of the meeting.

6 (d) The proposed bylaw change is deemed approved and ratified by  
7 the members if a majority of all the votes in the association vote at  
8 the meeting, in person or by proxy, to approve the bylaw change  
9 approved by the board.

10 (3) All bylaw changes ratified by the members in accordance with  
11 this section take effect the day after the annual or special meeting at  
12 which they were ratified.

13 NEW SECTION. **Sec. 18.** A new section is added to chapter 64.38 RCW  
14 to read as follows:

15 For rules, or amendments to rules, adopted after the effective date  
16 of this section:

17 (1) A rule adopted by the board is valid and enforceable if all the  
18 following requirements are satisfied:

19 (a) The rule is in writing;

20 (b) The rule is required by law or, within the authority of the  
21 board, conferred by law or by the declaration;

22 (c) The rule is consistent with the governing documents; and

23 (d) The rule is adopted or amended in substantial compliance with  
24 the requirements of this chapter.

25 (2) Except for emergency rules, the board of directors must provide  
26 the association's members with notice and an opportunity to comment on  
27 any proposed new or amended rule before the board is authorized to  
28 adopt or enforce that rule. For purposes of this section, an  
29 "emergency rule" is a rule that is necessary for the immediate  
30 preservation of health and safety or a rule that sets forth specific  
31 rights or obligations affecting the association or its members under  
32 state statutes or administrative rules. Emergency rules become  
33 effective immediately, subject to the members' right to request a  
34 ratification vote under subsection (3) of this section.

35 (3) Except for emergency rules, rules adopted by the board of  
36 directors following notice and an opportunity for comment become  
37 effective thirty days after notice of the rules is provided to the

1 members in the manner authorized by the governing documents, unless a  
2 written petition signed by twenty percent of the total votes in the  
3 association is submitted to the board within that thirty-day period  
4 requesting a ratification vote on the proposed rule. If a ratification  
5 vote is requested, the association shall use the following process for  
6 the ratification vote:

7 (a) The board of directors must submit the rules on which a  
8 ratification vote has been requested to a vote of the members. The  
9 vote must be conducted at the next regularly scheduled annual meeting  
10 of the association, or at a special meeting held before the next annual  
11 meeting.

12 (b) The notice of the meeting, at which the ratification vote will  
13 be conducted, must include the text of the proposed rules.

14 (c) Unless the governing documents specify a longer advance notice  
15 period for an association meeting, notice of the meeting, at which the  
16 ratification vote will be conducted, must be provided at least ten days  
17 in advance of the meeting and shall not be provided more than sixty  
18 days in advance of the meeting.

19 (d) The proposed rule change is deemed approved and ratified by the  
20 members, unless a majority of all the votes in the association vote at  
21 the meeting, in person or by proxy, to reject the rule change approved  
22 by the board.

23 (e) All rule changes ratified by the members in accordance with  
24 this section take effect on the original effective date or later  
25 effective date established by the board.

26 (4) The board of directors is not required to use the following  
27 optional rule-making process. However, use of this process establishes  
28 compliance with the requirements of subsection (1) of this section.  
29 For purposes of this section, "rule change" means the adoption or  
30 amendment of a rule by the board.

31 (a) The board shall give notice of a proposed rule change to the  
32 owners. The notice must include the following information: (i) The  
33 text of the proposed rule change; (ii) a description of the purpose and  
34 effect of the proposed rule change; and (iii) the deadline for  
35 submission of a comment on the proposed rule change.

36 (b) For a period of at least thirty days following actual or  
37 constructive delivery of a notice of a proposed rule change, the board  
38 shall accept written comments from owners on the proposed rule change.

1 (c) The board shall consider any comments it receives and make a  
2 decision on a proposed rule change at a board meeting. Except for  
3 emergency rules, a decision on a rule may not be made until after the  
4 comment submission deadline.

5 (d) The board shall give notice of a rule change to the owners.  
6 The notice must set out the text of the rule change and state the date  
7 the rule change takes effect. Except for emergency rules, the date the  
8 rule change takes effect must not be less than thirty days after notice  
9 of the rule change is provided in the manner authorized in the  
10 governing documents.

11 NEW SECTION. **Sec. 19.** A new section is added to chapter 64.38 RCW  
12 to read as follows:

13 Unless the governing documents permit or require other methods for  
14 providing notice, all notices required under this chapter or the  
15 governing documents must be delivered or sent by first-class mail  
16 postage prepaid to the mailing address of each owner, but not for a  
17 shorter time period for providing notice than is required under RCW  
18 64.38.035.

19 NEW SECTION. **Sec. 20.** A new section is added to chapter 64.38 RCW  
20 to read as follows:

21 (1) Subject to subsection (2) of this section, the declaration may  
22 provide for a period of declarant control of the association, during  
23 which period a declarant or persons designated by the declarant may (a)  
24 appoint and remove the officers and members of the board of directors  
25 or (b) veto or approve a proposed action of the board or association.  
26 A declarant's failure to veto or approve the proposed action in writing  
27 within thirty days of written notice of the proposed action is deemed  
28 an approval of the proposed action by the declarant.

29 (2) Regardless of any period provided in the declaration, a period  
30 of declarant control terminates no later than the earliest of: (a)  
31 Sixty days after conveyance of seventy-five percent of the lots that  
32 may be created to lot owners other than a declarant; or (b) two years  
33 after the last conveyance or transfer of record of a lot except as  
34 security for a debt, pursuant to which the declarant voluntarily  
35 surrenders the right to further appoint and remove officers and members  
36 of the board of directors. A declarant may voluntarily surrender the

1 right to appoint and remove officers and members of the board of  
2 directors before termination of the period of declarant control, but in  
3 that event the declarant may require, for the duration of the period of  
4 declarant control, that specified actions of the association or board  
5 of directors, as described in a recorded instrument executed by the  
6 declarant, be approved by the declarant before they become effective.

7 (3) No later than sixty days after conveyance of twenty-five  
8 percent of the lots that may be created to lot owners other than a  
9 declarant, at least one member and at least twenty-five percent of the  
10 members of the board of directors must be elected by lot owners other  
11 than the declarant. No later than sixty days after conveyance of fifty  
12 percent of the lots that may be created to lot owners other than a  
13 declarant, at least thirty-three and one-third percent of the members  
14 of the board of directors must be elected by lot owners other than the  
15 declarant.

16 **Sec. 21.** RCW 64.38.050 and 1995 c 283 s 10 are each amended to  
17 read as follows:

18 (1) Any violation of the provisions of this chapter entitles an  
19 aggrieved party to any remedy provided by law or in equity. The court,  
20 in an appropriate case, may award reasonable attorneys' fees to the  
21 prevailing party.

22 (2) The court must award attorneys' fees to a homeowner plaintiff  
23 who prevails in a suit to enforce chapter 64.38 RCW or the  
24 association's governing documents. The court may also award exemplary  
25 damages to homeowners upon a determination that the board of directors  
26 acted in bad faith.

27 NEW SECTION. **Sec. 22.** The code reviser shall alphabetize and  
28 renumber the definitions in RCW 64.38.010.

--- END ---

**SB 6054 - DIGEST**

Provides that an obligation of good faith is imposed in the performance and enforcement of all contracts and duties governed by chapter 64.38 RCW (homeowners' associations) and in all other transactions involving declarants, associations, and their members.

Modifies and implements provisions related to membership, powers, meetings, and governing documents of homeowners' associations.

Authorizes a homeowners' association to levy reasonable fines and to incorporate as a nonprofit organization.

**PAGE B**

DECLARATION OF Short Plat No. 05-00017

KNOW ALL MEN BY THESE PRESENTS:

THAT I, THE UNDERSIGNED, OWN THE LAND BEING SUBDIVIDED BY SP 05-00017, AND AM SEEKING APPROVAL BY LEWIS COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT OF THE HEREIN DESCRIBED SUBDIVISION OF LAND KNOWN AS SHORT PLAT No. 05-00017.

1. I, THE UNDERSIGNED HEREBY DEFEND, INDEMNIFY, AND HOLD HARMLESS LEWIS COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL COSTS OR DAMAGES INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES INCURRED AS A RESULT OF THE SIGNATORY NOT BEING OWNER OF PROPERTY BEING SUBDIVIDED. SUCH COSTS AND DAMAGES INCLUDE BUT ARE NOT LIMITED TO LITIGATION, VOLUNTARY QUIET TITLE, BOUNDARY DISPUTES, LOSS OF ALL OR PORTION OF REAL PROPERTY AND SLANDER OF TITLE.
2. I, THE UNDERSIGNED, HEREBY ACKNOWLEDGE THAT THIS SHORT PLAT HAS BEEN MADE WITH MY FREE CONSENT AND IN ACCORDANCE WITH MY DESIRES.
3. THE UNDERSIGNED DOES HEREBY CERTIFY THAT HE IS THE SOLE VESTED OWNER OF THE PROPERTY SHOWN ON THIS PLAT, CERTIFIES THIS TO BE A FREE AND VOLUNTARY ACT, AND DEDICATES TO THE USE OF THE LOT OWNERS THEREOF ALL EASEMENTS SHOWN THEREON, FOR INGRESS, EGRESS AND UTILITIES; AND FURTHER, DOES HEREBY REPRESENT AND WARRANT ALL EASEMENT(S) AND ACCESS TO BE TRUE AND ADEQUATE FOR THE PURPOSES OF LCC 16.10.300, 16.10.400 AND 16.10.430.
4. THE COVENANTS RECORDED UNDER AFN 3277586 PROVIDE FOR THE ADEQUATE AND PERPETUAL MAINTENANCE OF THE ROADS AND STORMWATER FACILITIES IN SHORT PLAT SP 05-00017.

20' EASEMENT FOR UTILITY ACCESS

DATED 10 DAY, OF April, 2007  
John J. Hadaller  
JOHN J. HADALLER DATE

14'x 60' Mobile (Temp. Dwelling) Sits Back from Top of Break 70'+/

Fnd. 3/4" I.P. S09°00'W 18.2' (Hoye 22732, from 1/2" R&C EAB 18896

State of Washington  
County of Lewis  
On May 10, 2007, John J. Hadaller personally appeared before me,

X who is personally known to me  
\_\_\_\_\_ whose identity I proved on the basis of \_\_\_\_\_  
\_\_\_\_\_ whose identity I proved on the oath/affirmation of \_\_\_\_\_ a credible witness

to be the signer of the above document, and he/she acknowledged that he/she signed it.

Lorna F. Anderson  
Notary Public

Exhibit 2 #40426-5-II



COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN J. HADALLER ) Court of Appeals No. 40426-5-II  
Appellant, ) Lewis County No. 09-2-00052-1  
V. )  
MAYFIELD COVE ) DECLARATION OF SERVICE  
ESTATES HOMEOWNER'S )  
ASSOCIATION )  
Respondent )

---

Deborah J. Reynolds, Declares as follows:

That I am now and all times here-in mentioned, was a citizen of the United States of America and a resident of the state of Washington over the age of eighteen (18) years, and not a party to the above action and competent to be a witness therein.

That on the 3rd day of January 2011 I served the following documents:

- *DECLARATION OF SERVICE*
- *AMENDED APPELLANT'S OPENING TRIAL BRIEF*

On the following: by the indicated method of service.

To:

David A. Lowe  
Black, Lowe & Graham pllc  
701 5<sup>th</sup> Ave. STE 4800  
Seattle, Wa. 98104-7009

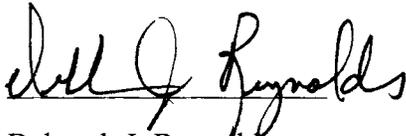
11 JAN -4 PM 12:14  
STATE OF WASHINGTON  
DEPUTY  
COURT OF APPEALS  
DIVISION II

e.-Mail  U.S. Mail  fax

Personal service

The fore-going statements are made under the penalty of perjury under the laws of the state of Washington and are true and correct.

Signed this 3rd day of January 2011 at Mossyrock, Wa.



Deborah J. Reynolds